

In the
Supreme Court of the State of Nevada

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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. 4 of 4

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ALPHABETICAL TABLE OF CONTENTS

<u>Document</u>	<u>Date</u>	<u>Bates</u>	<u>Vol.</u>
Activehours, Inc.'s and Stacy Press's Brief in Support of Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition S-03-2024 (24 OC 00029 1B)	02/13/24	AA0262 – AA0321	2
Activehours, Inc.'s and Stacy Press's Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition S-03-2024 (24 OC 00029 1B)	02/13/24	AA0205 – AA0261	2
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	03/08/24	AA0548 – AA0561	3
DailyPay, Inc.'s Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Legal Challenges to Initiative Petition S-01-2024	04/15/24	AA0763 – AA0772	4
DailyPay, Inc.'s Memorandum of Points and Authorities in Support of Complaint for Declaratory and Injunctive Relief (24 OC 00021 1B)	02/14/24	AA0322 – AA0412	2
DailyPay, Inc.'s Reply in Support of Complaint for Declaratory and Injunctive Relief	03/08/24	AA0562 – AA0574	3
DailyPay, Inc.'s Complaint for Declaratory and Injunctive Relief (24 OC 00021 1B)	01/29/24	AA0068 – AA0144	1

<u>Document</u>	<u>Date</u>	<u>Bates</u>	<u>Vol.</u>
Hearing Transcript	03/22/24	AA0601 – AA0762	4
Kate Feldman’s and Stop Predatory Lending NV’s Case Appeal Statement	04/17/24	AA0829 – AA0834	4
Kate Feldman’s and Stop Predatory Lending NV’s Findings of Fact and Conclusions of Law and Order Denying Plaintiffs’ Legal Challenge to Initiative Petition S-03-2024	04/15/24	AA0773 – AA0782	4
Kate Feldman’s and Stop Predatory Lending NV’s Notice of Appeal	04/17/24	AA0813 – AA0828	4
Kate Feldman’s and Stop Predatory Lending NV’s Notice of Entry of Findings of Fact and Conclusions of Law and Order (S-03-2024)	04/16/24	AA0783 – AA0797	4
Kate Feldman’s and Stop Predatory Lending NV’s Notice of Entry of Findings of Fact, Conclusions of Law, and Order (S-01-2024)	04/16/24	AA0798 – AA0812	4
Kate Feldman’s and Stop Predatory Lending NV’s Omnibus Response	03/01/24	AA0503 – AA0547	3
Nevadans for Financial Choice and Christina Bauer’s Acceptance of Service – Francisco Aguilar (24 OC 00018 1B)	02/28/24	AA0499 – AA0500	3

<u>Document</u>	<u>Date</u>	<u>Bates</u>	<u>Vol.</u>
Nevadans for Financial Choice and Christina Bauer's Acceptance of Service - K. Feldman and Stop Predatory Lending NV (24 OC 00018 1B)	02/28/24	AA0501 – AA0502	3
Nevadans for Financial Choice and Christina Bauer's Brief in Support of Complaint for Declaratory and Injunctive Relief Concerning Statewide Ballot Initiative (24 OC 00018 1B)	01/26/24	AA0033 – AA0067	1
Nevadans for Financial Choice and Christina Bauer's Brief in Support of First Amended Complaint for Declaratory and Injunctive Relief Concerning State-Wide Ballot Initiative (24 OC 00018 1B)	02/14/24	AA0466 – AA0469	3
Nevadans for Financial Choice and Christina Bauer's Complaint for Declaratory and Injunctive Relief Concerning Statewide Ballot Initiative (24 OC 00018 1B)	01/26/24	AA0001 – AA0032	1
Nevadans for Financial Choice and Christina Bauer's First Amended Complaint for Declaratory and Injunctive Relief Concerning State-Wide Ballot Initiatives S-01-2024 and S-03-2024 (24 OC 00018 1B)	02/14/24	AA0413 – AA0465	3
Nevadans for Financial Choice and Christina Bauer's Reply Brief in Support of Challenge to Statewide Initiatives S-01-2024 & S-03-2024	03/11/24	AA0575 – AA0585	3

<u>Document</u>	<u>Date</u>	<u>Bates</u>	<u>Vol.</u>
Notice of Entry of Stipulation and Order	02/26/24	AA0484 – AA0498	3
Preferred Capital Funding Nevada, LLC and Alliance for Responsible Consumer Legal Funding’s Complaint for Declaratory and Injunctive Relief Challenging Initiative Petitions S-01-2024 and S-03-2024 (24 OC 00023 1B)	01/29/24	AA0145 – AA0204	1
Preferred Capital Funding Nevada, LLC and Alliance for Responsible Consumer Legal Funding’s Reply in Support of Complaint for Declaratory and Injunctive Relief Challenging Initiative Petitions S-01-2024 and S-03-2024	03/12/24	AA0586 – AA0597	3
Preferred Capital Funding Nevada, LLC and Alliance for Responsible Consumer Legal Funding’s Acceptance of Service – Kate Feldman (24 OC 00023 1B)	03/21/24	AA0598 – AA0600	3
Secretary of State’s Limited Omnibus Response	02/23/24	AA0480 – AA0483	3
Stipulation and Scheduling Order of the Court	02/22/24	AA0470 – AA0479	3

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DATED this 1st day of May, 2024.

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By: */s/ Bradley Schrager*

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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
BRAVO SCHRAGER LLP

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TRANSCRIPT OF VIDEO-RECORDED
HEARING IN THE MATTER OF
NEVADANS FOR FINANCIAL CHOICE V. KATE FELDMAN
MARCH 22, 2024

CASE NO. 24-OC-00018-1B

Job No. LVR6622796

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P R O C E E D I N G S

THE COURT: Please be seated. I had this on my computer for 2:00 o'clock this afternoon. So it's -- okay. Okay. Are we on the record now?

CLERK: Yeah.

THE COURT: Okay. I think we're hearing all four cases, uh, case number 24OC000181B, 24OC000211B, 24OC000231B, 24OC000291B. Uh, starting on the left over there, can you identify yourself and who you represent?

MR. CARLSON: Good morning, Your Honor. Sev Carlson with Kaempfer Crowell. My colleague is CMR Graves here on behalf of Active Hours and, uh, Plaintiff.Press.

THE COURT: Okay. Okay.

MR. SCHRAGER: I'll let the other plaintiffs make their --

THE COURT: Okay. You know, I suppose some of you could sit there in the jury box if you wanted to.

MR. SCHRAGER: We'll look like a bus stop.

THE COURT: Yeah.

MR. REISMAN: Your Honor, my name is Josh Reisman. I'm -- I'm here --

THE COURT: Ries- -- R- -- Reisman?

MR. REISMAN: R-e-i- --

1 THE COURT: Okay.

2 MR. REISMAN: -- -s-m-a-n. I'm here on 231B, uh,
3 and I'm representing plaintiffs for Third Capital
4 Funding Nevada, LLC and then Alliance for Responsible
5 Consumer Legal Funding, or ARC.

6 THE COURT: Okay.

7 MR. MORRIS: Good morning, Your Honor. My name is
8 Matt Morris, M-o-r-r-i-s, um, with law firm Holland &
9 Hart. We're here in, uh, case 240C000211B. We're here
10 on behalf of DailyPay, Incorporated.

11 THE COURT: Okay.

12 MR. DEVOY: Good morning, Your Honor. Jay DeVoy,
13 D-e-v-o-y, also present with Mr. Morris on behalf of
14 DailyPay in the, uh, 211B matter.

15 THE COURT: Okay.

16 MALE: And I'll let Mr. Bice on behalf of another
17 plaintiff make his appearance.

18 MR. BICE: Thank you. Uh, good morning, Your
19 Honor. Todd Bice on behalf of the plaintiffs in the
20 lead case, 181B, uh, Nevadans for Fi- -- Financial
21 Choice and Christina Bauer [ph].

22 THE COURT: Do I -- should I be able to see him
23 on Zoom up here somewhere?

24 CLERK: Do you want us to log on, Your Honor? We
25 can put you --

1 THE COURT: Uh, let's -- we'll just go forward.
2 If you can turn the sound up a little bit, I was
3 having a hard time hearing him.

4 CLERK: Okay.

5 THE COURT: Anybody else?

6 MR. SCHRAGER: I think that's it for the
7 plaintiffs.

8 THE COURT: Okay.

9 MR. SCHRAGER: Your Honor, Bradley Schragger of
10 Bravo Schragger for the, uh -- for the intervener
11 defendants, uh, Kate Feldman and, uh, Stop Predatory
12 Lending Nevada here on all four cases.

13 MS. ST. JULES: Uh, good morning. Uh, Laena St.
14 Jules with the attorney general's office on behalf of
15 Nevada Secretary of State in all cases.

16 THE COURT: Okay. Um, how do we want to proceed?
17 Who wants to go first? I guess it's, uh, plaintiffs,
18 uh -- who in the plaintiffs wants to go first? I've --
19 I've reviewed all of the briefs in this matter. Am I
20 correct, we've got -- we are hearing four cases here
21 today?

22 MR. DEVOY: Yes, sir.

23 MR. BICE: Yes.

24 THE COURT: Uh, if I look confused, it's because
25 I just -- I was sitting in my easy chair at 8:45

1 thinking I had this hearing this afternoon at 2:00
2 o'clock. So, uh, I apologize. Uh, so we've got case
3 number 240C000211B, which is Nevadans for Financial
4 Choice versus Kate Feldman, uh, who I guess is the --
5 one of the, uh -- uh, people proposing initiative
6 referendum 20- -- uh, and I'll -- I'll just put in the
7 last -- 1821 is DailyPay, Inc. is the plaintiff.

8 Uh, 231B Preferred Capital Funding, is the
9 plaintiff and then, uh -- uh, 291B is Active Hours,
10 Inc., a Delaware Corporation. And then if I understand
11 correctly, the, um -- the initiatives, uh, we're
12 talking about are S-01-2024 and S-03-2024; is that --
13 am I correct on this?

14 MR. DEVOY: That's correct.

15 THE COURT: And then there's -- uh, you all
16 stipulated there was one, uh -- one, um, response to
17 all of the, uh -- the, uh, complaints that were filed.
18 Okay. So, uh, I guess we can start with the earliest
19 case, which is 181B, Nevadans for Financial Choice.
20 Uh, Mr. Bice, I guess you're representing that?

21 MR. BICE: I am, Your Honor. [Inaudible]

22 THE COURT: Okay. Go ahead.

23 MR. BICE: Thank you, Your Honor. It's good to
24 hear your voice, although, I can't see you. Uh, so
25 thank you. Uh, before The Court, as you indicated, are

1 two initiative petitions, which -- which actually bear
2 the identical type. They are both entitled, Preventing
3 Pay -- Predatory Payday and Other Loan Debt.

4 Uh, these petitions are substantively identical,
5 except the subsequent iteration, which is S-03-2024
6 delete, uh, proposed changes to NRS Chapter 21, which
7 concerns writs of garnishment and writs of execution.

8 Uh, obviously, we cannot know the proponent's
9 strategy or thinking on those changes, uh, but by all
10 appearances, it seems to be that they hope that by
11 eliminating one sin- -- single subject violation from
12 the first image here, that somehow that will cause The
13 Court to accept the second initiative and allow it to
14 receive, um, and despite the [Inaudible] singles
15 violation in that second initiative.

16 So Your Honor, our -- our clients, uh, Nevadans
17 for Financial Choice and Christina Bauer as well as
18 the other plaintiffs here, uh, urge This Court to
19 reject what we think is, you know, a fairly
20 transparent, uh, bait and switch here, uh, because
21 neither of these petitions satisfy the requirements of
22 NRS 295.009.

23 Uh, they both have, uh, violations single subject
24 requirement and descriptions, uh, of effect are
25 deficient and that rolls out of the single subject

1 violation. We've also pointed out in our briefing that
2 they violate the requirements of Article 19, Section 3
3 of the Nevada Constitution by failing to display in
4 full text of what they are proposing to change.

5 Um, so let me just turn, Your Honor, briefly to
6 the single subject issue and I know that The Court is
7 very familiar with this subject matter, uh, you've
8 handled a lot of cases on this subject matter, uh,
9 over the years.

10 So, uh, as to be expected with any proponent, Mr.
11 Schragger's clients urge The Court's deference to the
12 initiative process noting that the citizenry has the
13 right to propose direct legislation by way of
14 initiative and [Inaudible] a right on that and we
15 agree with that as a general proposition.

16 Uh, both Mr. Schragger and I have argued and
17 defended in the past, but see, in this case, what the
18 proponents are disregarding is that NRS 295.009 is
19 actually a statutory requirement that is designed to
20 safeguard the initiative process, to protect that
21 process for abuse and we think the abuse is, in this
22 case, with having two initiatives with identical
23 titles that -- that -- that join together a whole host
24 of distinct, uh, topics.

25 And as The Court knows, uh, in the Heller

1 decision, the Supreme Court said that, you know, uh,
2 the single subject requirement actually facilitates
3 the fair initiative process, uh, in the state. And so
4 it needs to be followed and -- and that's what The
5 Court faces here.

6 We have an initiative proponent that has proposed
7 two identical initiatives, uh, just one contains a
8 couple more provisions than the other one, both
9 operating under the identical title, uh, and even
10 ignoring the -- the separate subjects of writs of
11 garnishment and writs of execution, which are in the,
12 uh, first initiative.

13 Uh, the second initiative continues to impact a
14 whole host of distinct financial transactions that are
15 of an unrelated nature. Now, the proponent attempts to
16 sell these petitions under the -- to the -- to the
17 public under the guise of regulating what I -- I would
18 characterize as a boogeyman, which is the so-called
19 payday loans, uh, but those are already governed by
20 NRS Chapter 604A.

21 And then throughout these petitions and including
22 the title, the petitioners talk about payday loans and
23 payday lenders, but then they add on for other persons
24 or loans and they do that, if you look at Section 7,
25 9, 10, 12, 13 intervals, it's always payday and then

1 something else and it's, uh, not just one something
2 else, it's a multitude of something else.

3 If you look at Section 8 of both of these
4 initiatives, right, it's payday and then refund
5 anticipation loans, consumer litigation funding, um,
6 installment transactions, installment loans, retail
7 installment transactions, life insurance and annuity
8 contracts and then in their Section 8, their final
9 provision, they've got a catchall of any types of
10 loans made by an ordinary financial institution, such
11 as a bank, credit union and alike.

12 There is no common thread here that ties all
13 these subjects together consistent with requirements
14 of Nevada law.

15 Um, the other plaintiffs here, Your Honor, will
16 have some points and they'll pro- -- and they'll be
17 able to make them better than I could about a number
18 of these different transactions or these different
19 sections, because they impact their particular clients
20 and system or industries.

21 So I'm just going to focus on a couple of them in
22 the interest of time. Dealing with the first
23 initiative, Your Honor, which is S-01-2024, in Section
24 17 and 18, I submit are fairly transparent violation
25 to single subject requirement. Those provisions deal

1 with writs of garnishment and writs of executing
2 generally.

3 That concerns -- those patterns concern, uh,
4 judicial judgments. Who can select a judgment? Who can
5 -- and under what circumstances? And what types of
6 exemptions is it? That doesn't have anything to do
7 with payday loans. Um, then consider, Your Honor,
8 Section 14 of both petitions.

9 That is a provision that proports to opt out of
10 the depository institution's De- -- Deregulation and
11 Monetary Control Act of 1980. That is a 40-year-old
12 law that Congress implemented that is designed to make
13 state-chartered financial institutions competitive
14 with federally-chartered financial institutions.

15 So do the voters of the state of Nevada really
16 want to enact that opt-out 40 years after the fact,
17 which would thereby unlevel the playing field between
18 federal and state-chartered financial institutions?
19 That is a completely separate subject from payday
20 loans, which is what the title of this, uh, purported
21 initiative -- or both of these initiatives purport to
22 focus upon.

23 Again, Your Honor, you can go through other
24 provisions of Section 8, I don't need to do that, uh -
25 - uh, the other plaintiff's counsel will be able to do

1 that better than I can. Our point here is that both of
2 these initiatives will reach a multitude of different
3 transactions that do not constitute a single subject
4 and the proponents, we submit, effectively
5 [Inaudible].

6 In their -- in their, uh, omnibus opposition,
7 they claim with emphasis that Nevada law does not
8 require the petition's provisions, that they need to
9 relate to each other. That's their central argument
10 and according to them, all the provisions can be
11 unrelated to each other as long as they have some
12 nexus to the overall subject matter, but that's
13 actually not Nevada law.

14 NRS 295.009 says the exact opposite and the
15 Nevada Supreme Court said the exact opposite in the
16 recent Helton versus the Nevada Voters First PAC case,
17 which the opponents sig- -- or the proponents of these
18 initiatives significantly rely -- rely upon. Uh, so
19 let me address that case in some detail, because Mr.
20 Schragger and I have, uh, I would say, intimate
21 knowledge of it.

22 That is, uh, an initiative petition that I was
23 the architect of and I was the -- at the, uh, counsel
24 for it in both the district court as well as the
25 Nevada Supreme Court and my friend, Mr. Schragger, in

1 the courtroom, was the challenger's counsel on that
2 initiative and contrary to what the proponents are
3 arguing here, the Nevada -- the Supreme Court didn't
4 alter or expand the single subject concept under
5 Nevada law.

6 As The Court there explained, that initiative
7 petition concerned a single subject, which was the
8 means by which partisan officeholders are elected.
9 Now, the opponents there argued that that initiative
10 encompassed at least two separate subjects, because it
11 reached both the primary election and the general
12 election.

13 Uh, and as -- but as the initiative sponsor, what
14 I explained was it concerns a single subject, because
15 while it does technically impact two elections, those
16 elections are intertwined with each other.

17 The primary election is the -- is the means of
18 which the number of candidates are whittled down and
19 the general election is the process by which the
20 ultimate owner is chosen and the Supreme Court
21 ultimately, and -- and I acknowledge a divided
22 decision, ultimately agreed with that.

23 All the provisions -- The Court held that all the
24 provisions in that initiative functionally related and
25 was related to each other as well as the subject

1 matter in that case, which was changing the manner in
2 which partisan political candidates were ultimately
3 chosen by the voters. There's nothing in the Helton
4 decision which the proponents can analogize these
5 overbroad petitions to.

6 They have numerous provisions that do not
7 function and relate to each other and as we've noted,
8 they admit it. And so what they have done in their --
9 on their response brief is they claim well, they can --
10 -- they can characterize their initiatives as being
11 about "consumer debt relief" or "financial wellbeing."

12 And again, Your Honor, those generalities that
13 are nowhere mentioned in the petitions, by the way,
14 but anything could be made to fit within those --
15 those general, uh, concepts. Student loans, divorces --
16 -- divorces impact, uh, people's financial wellbeing
17 and it also, uh, impacts, uh, their debts.

18 Child support in fact impacts people's financial
19 wellbeing as well as consumer debts, so does gaming
20 debts. You could -- anything that involves money you
21 could cram into their generalized topics, which is
22 what the Nevada Supreme Court had said that it's just
23 simply not appropriate, Your Honor.

24 So Your Honor, I'd like to just turn then briefly
25 to the description of effect problems, because it's

1 interrelated here and I understand why the proponents
2 complain about the 200-word, uh, limitations, uh, but
3 the -- the reason that they are complaining about it
4 is because these petitions are so overbroad and so
5 encumbered and impact a whole host of different types
6 of transactions, but there's no way to fairly describe
7 them in 200 words.

8 I agree with them on that, you can't describe
9 them in 200 words, because they're not limited to a
10 single subject. And again, Your Honor, I think the
11 Helton decision is actually [Inaudible] on that. In
12 that case, we were changing, uh -- we were changing
13 the elec- -- the way in which candidates are elected
14 and we understood and agreed that that was a quite
15 significant change in the law, but we were able to
16 describe that in 200 words.

17 Why? Because it was a single subject. The manner
18 in which you were electing these candidates, that's
19 what we were changing, but here they effective concede
20 they can't describe this in 200 words, because it
21 impacts so many different things and again, Your
22 Honor, I would just point out, you know, they're
23 opting out of the 1980 Federal Act, um, without ever
24 disclosing that to the voters.

25 Uh, they proposed to eliminate a whole host of

1 exemptions to the state's, uh, laws concerning, uh,
2 writs of garnishment and writs of -- writs of
3 execution. Under current law, social security,
4 veteran's benefits, disability benefits, there are a
5 whole host of exemptions. They're eliminating all
6 those, but nowhere do they disclose that to potential
7 signers.

8 So none of these items are -- are disclosed and
9 again, the problem here is that the initiative just
10 simply tries to cover way too much ground, um, and it
11 doesn't comply with the single subject requirement.
12 And then lastly, Your Honor, briefly if we just touch
13 on our whole textbook, uh, argument, I believe other
14 counsels will address that in great detail.

15 I would just emphasize to The Court if you look
16 at the first initiative, I think this is a telling
17 example by them, if you look at their changes to NRS,
18 uh, 21.01 -- or 105 and 090, they've detailed all of
19 the changes that they are making to those statutes,
20 which is what they are required to do, because they
21 are repealing many, many provisions of those statutes.

22 But if you look at the remainder of the
23 initiatives outside of those two provisions, they're
24 making wholesale changes to Nevada law and they aren't
25 showing the voters what those changes would be and

1 that is the big problem here. The constitution
2 requires that you actually, uh, disclose the full text
3 of what you are proposing to change here and they just
4 don't do that and I understand their argument.

5 They said, well, that would be very, very
6 cumbersome, it would take multitude of pages in order
7 to -- to show those changes to the voters. Well,
8 that's not an argument that, uh, supports their
9 position, it's an argument that demonstrates that
10 these, uh, petitions are overbroad and transcend the
11 requirement of the single subject.

12 And so with that, uh, Judge Maddox, uh, unless
13 The Court has questions, I'll defer to, uh, my
14 colleagues.

15 THE COURT: No. I have nothing right now. Um --

16 MR. BICE: Thank you, Your Honor.

17 THE COURT: -- which is the next case? Uh, that
18 was, um, 29, I guess, uh, Active Hours, Inc. Uh, who
19 wants to go next?

20 MR. MORRIS: Good morning, Your Honor. Um, let
21 me make sure my mike is on. Morning, Your Honor. Matt
22 Morris, um, counsel on behalf DailyPay, Incorporated.
23 Um, we're here -- uh, we share some of the concerns
24 that, uh, my colleague, Mr. Bice, just articulated for
25 The Court, but we also have, uh, some distinct

1 arguments, uh, that I'd like to outline for The Court
2 this morning.

3 Um, we too, uh, are challenging the -- both
4 petitions as violating, uh, NRS 295.009's single
5 subject rule, because the petitions, um, embrace more
6 than one subject and embrace matters that are not
7 necessarily connected therewith and pertaining thereto
8 and because under Subsection 2 of NRS 295.009, a --
9 the petitions do not sufficiently notify a potential
10 voter of the interests that are to be affected by the
11 petitions if they take effect.

12 We also challenge the descriptions of effect,
13 because they are misleading and deceptive and they do
14 not adequately inform a voter of the actual effects --
15 the broad effects of the petitions, uh, if they are to
16 be -- uh, if they are to take effect.

17 We also challenge that the petitions, uh, are
18 actually a referendum on legislation that was just
19 passed during the 2023 session and that legislation is
20 Senate Bill 290 and it authorized earned wage access
21 services, which are the services that my client, uh,
22 DailyPay, Incorporated provides.

23 We also challenge, uh, the, uh, full text, uh,
24 rule, uh, which Mr. Bice also explained. Uh, in other
25 words, the petitions do not include the full text of

1 the measure proposed. The petitions include
2 definitions that are set forth in Senate Bill 290, but
3 the petitions do not include the texts of those
4 definitions and -- or the definitions of other
5 statutes that the petitions would amend or appeal.

6 And finally, uh, we note that there are physical
7 effects that are associated with these petitions that
8 are not explained or sufficiently accounted for, uh,
9 in violation of the Nevada Constitution Article 19. So
10 to begin with, the single subject argument, uh, that
11 DailyPay brings, um, NRS 295 is clear, the petition
12 must embrace only one subject in matters that are
13 necessarily connected therewith or pertaining thereto,
14 that's Subsection 1.

15 Subsection 2 provides that the test for whether
16 the petitions meet the single subject standard is
17 whether the petitions provide sufficient notice of the
18 interests that are likely to be affected if the
19 petitions take effect. Now, we have to begin with a
20 very, uh, broad overview of Senate Bill 290, Your
21 Honor, which was passed just this last legislative
22 session.

23 It's Exhibit 1 to our briefing that we filed on
24 February 14th. And Senate Bill 290 in general
25 authorized a new type of financial service, which is

1 Earned Wage Access services or EWA services, how we
2 refer to them in our briefing and EWA services very
3 simply allow a worker to access money that they have
4 worked for and earned but that they have not yet
5 received on a regularly scheduled payday.

6 There are two types of -- of EWA services under
7 Senate Bill 290, there are direct to consumer and
8 there are, uh, employer integrated services. DailyPay
9 is an employer integrated earned wage access service
10 provider and what that means is that DailyPay partners
11 with an employer who provides payroll data and other
12 data that, uh, allows the service provider to verify
13 that a worker has earned what they are accessing.

14 And so by definition, our client, DailyPay, has
15 to partner with third-party entities, whether it's an
16 employer, whether it's a payroll service provider. Our
17 client has to partner with these entities to provide
18 this financial service that allows a worker to access
19 their wages. That's important, because the petitions
20 do not sufficiently describe the entities to which
21 they apply and I'll discuss that under, uh, sec- --
22 uh, under our second argument as to the description of
23 effect.

24 But on the single subject argument, the single
25 subject -- the purpose is to promote informed

1 decisions and to prevent the enactment of unpopular
2 provisions that are wrapped up in other popular
3 provisions or concealing them in a lengthier complex
4 initiative. So here, Your Honor, we have a -- a
5 petition that proposes a Preventing Predatory Payday
6 Loans and Other Loans Act.

7 Senate Bill 290, which authorized the service
8 that my client provides, expressly states, earned wage
9 access services are not loans. Earned wage access
10 service providers are not lenders. Earned wage access
11 products are not credit products, they are not subject
12 to Nevada's lending laws, they are not subject to
13 Nevada's lender laws.

14 That was an expressed provision that the
15 legislature adopted in Senate Bill 290 and that's at
16 Section 33 and again, it's Exhibit 1 of our briefing.
17 The petitions, however, would include earned wage
18 access transactions under the definition of a loan and
19 that's Section 51C of the petition, which provides
20 that a transaction that allows a worker to access
21 wages that they have already earned but have not yet
22 received would be considered a loan for purposes of
23 this Act.

24 That ignores what the legislature has already
25 adopted under Senate Bill 290, which states these

1 services are not loans. This is not lending, you are
2 allowing a worker to access wages that they have
3 already earned. It's not future earnings, it is not
4 collateral, it is not credit, they have already earned
5 it.

6 Now, our client partners with the employer to
7 verify that the employee has already earned these
8 wages before the employee can access them. So the
9 legislature looked at that service and said, it's not
10 a loan, it's not lending and it's not credit, but
11 these petitions tell the voter, we're only going after
12 predatory payday loans or other loans.

13 Well, our client and the service that our client
14 offers cannot be functionally related or germane to a
15 loan petition or legislation relating to loans when
16 the service that we offer under current law, Senate
17 Bill 290, is not a loan, it is not credit. In -- in
18 addition, Your Honor, we challenge NRS, uh, 295.009
19 Subsection 2.

20 We raise that point, because our client offers
21 this service currently to thousands of Nevadans, we
22 outlined that in our complaint. Over 36,000 Nevadans
23 have access to DailyPay's earned wage services and
24 there are more than 12,000 Nevadans who are currently
25 enrolled as DailyPay earned wage access users.

1 If a petition, uh, circulator presents a petition
2 to one of those users, there is nothing in the
3 petition to alert them that they will be supporting an
4 initiative that is adverse to their interests. This
5 petition would impose trouble damages, it would impose
6 liability, it would impose civil penalties, but there
7 is nothing in the petition that explains that to a
8 potential voter that their interests are adversely
9 affected.

10 And so the petition does not meet NRS 295.009
11 Subsection 2's standard. According to -0- we -- we --
12 we argue -- as -- and as Mr. Bice already explained, I
13 -- I won't, um, reiterate what he already explained,
14 but these petitions violate the single subject rule as
15 to, uh, earned wage -- earned wage access services.

16 In addition, Your Honor, we also challenge the
17 description of effect as inadequate and as Mr. Bice
18 said, it is an extension of the single subject
19 argument. The description of effect has to be
20 transparent, it has to be succinct, straightforward,
21 nonargumentative, not misleading, not deceptive.

22 In short, it has to tell the voter what is the
23 actual effect of the petition that the voter is being
24 asked to support? Well, here the description of effect
25 only refers to predatory loans, other loans or to

1 transactions that are masked. In other words,
2 disguised as loans but called something else, but
3 nothing in the description of effect explains that it
4 also applies to services that are not loans by
5 definition under existing law.

6 Nothing in the description of effect explains,
7 for example, that earned wage access services under
8 Senate Bill 290 are prohibited from charging interest,
9 they are prohibited from charging late fees, they are
10 prohibited from taking recourse against an earned wage
11 access user, they are prohibited from re- -- relying
12 on the user's credit score.

13 This is in Section 31 of Senate Bill 290. There
14 is nothing about earned wage access services that can
15 reasonably be referred to as predatory under existing
16 law, but the petition -- the language of the petition
17 under Section 5 would refer and would in- -- would
18 redefine the services as loans and the description of
19 effect is misleading, because it leads the voter to
20 believe that these services are predatory when they
21 are anything but under existing law.

22 And so we challenge the description of effect as
23 inadequate and as misleading. Now, we -- we
24 acknowledge that NRS 295 allows the petitions to amend
25 their description of effect. And so if This Court, um,

1 agrees that the description of effect is inadequate,
2 it can allow the petitioners to limit and to move
3 forward.

4 Now, we challenge that that remedy here with
5 regard to earned wage access services and with regard
6 to 290 -- Senate Bill 290 is a futile remedy, that it
7 -- it would be futile, because if the petitions are to
8 amend their description of effects to be accurate and
9 truthful about earned wage access services, then they
10 have to admit that what they're really doing is
11 they're asking for a referendum on Senate Bill 290,
12 because the description of effect would have to
13 explain to a voter that Senate Bill 290 says earned
14 wage access services are not a loan, that service
15 providers are not lenders and that service providers
16 may not charge interest, may not charge late fees, may
17 not take recourse against a user.

18 The description of effect would have to include
19 that language to meet the standard of being tru- --
20 uh, straightforward and truthful, but the more
21 truthful that the petitions are about what they would
22 do re- -- relative to earned wage access services, the
23 clearer it becomes that what they're really doing is
24 seeking a referendum on Senate Bill 290.

25 Now, the constitution distinguishes referenda

1 from initiative petitions. In the Garbin [ph] case,
2 which is what we cite in our briefing makes it very
3 clear, referendum is about the voter's right to
4 approve or disapprove legislation and initiative
5 petition is about the voter's right to enact a new law
6 or to amend an existing statute.

7 Now, here under Section 15 in the petitions,
8 these petitions explicitly call out legislation that
9 authorized earned wage access services. They do not
10 amend a statute relative to earned wage access
11 services, because the bill was just passed, there is
12 no statute yet, it's too new.

13 They can't cite to a statute saying we're going
14 to amend this statute that deals with earned wage
15 access services, because it -- it is right now in --
16 in legislative form, Senate Bill 290, which is what
17 Section 15 refers to. So it's clear that this is
18 really a referendum on what the legislature determined
19 relative to the services that my client provides,
20 which are earned wage access services.

21 And to -- to emphasize, the legislature
22 determined that these services are not lending and
23 they treated them as such and that is what the bill --
24 that is the heart of Senate Bill 290. And so if the
25 petitioners want to run a referendum on Senate Bill

1 290, which passed by overwhelming majorities in the
2 legislature in which the governor signed into law,
3 they need to run a referendum and they need to tell
4 voters exactly what they're doing.

5 They shouldn't run a referendum as an initiative
6 petition that includes all of these other subjects
7 that are unrelated to earned wage access services.
8 Your Honor, I think Mr. Bice, um, very, uh, aptly
9 argued the full text requirement, it's very simple and
10 straightforward.

11 Um, the constitution requires if you are amending
12 or appealing, uh, legislation, you have to include the
13 full text so the voter can refer to that text and
14 understand what they are asked to amend, what they are
15 asked to -- to, uh, repeal. Uh, the petitions here
16 have to include Senate Bill 290 in its full text so
17 that a -- a voter can understand what are earned wage
18 access services, what are employer integrated earned
19 wage access services?

20 There is no way for a voter to understand that
21 without having a copy of Senate Bill 290 attached to
22 the petition for their review. And finally, Your
23 Honor, we also challenge the physical effects that
24 will necessarily result from these petitions if they
25 are adopted. Now, what we've attached to our, uh,

1 briefing as Exhibit 4 is a physical note that was
2 attached to Senate Bill 290.

3 The reasons are because number one, the petitions
4 call out Senate Bill 290, specifically in Section 15,
5 and we want The Court to understand that there was a
6 significant physical impact associated with the
7 legislature's decision to authorize earned wage access
8 services.

9 The state said that in order to regulate earned
10 wage access services, it will cost more than \$150,000
11 per physical year to regulate the 25 different
12 licensees, in- -- including my client, DailyPay, who
13 are seeking to obtain a license to provide this
14 service.

15 Now, the petitions would vastly expand the
16 regulatory oversight, not only over earned wage access
17 service providers, but against the employers that they
18 have to partner with by definition and against other
19 entities and yet, the petitioners are pretending that
20 there will not be any physical impact to this vast
21 regulatory expansion.

22 And so we attached the physical note by analogy
23 to show that there will be a very real physical impact
24 associated with these petitions and then we also
25 referred to the legislative counsel bureau's physical

1 analysis division, which has, uh, indicated that a
2 physical note is forthcoming.

3 Um, it may very well be that the LCB Physical
4 Division determines there is no physical impact, uh,
5 we would dispute that based on the physical note under
6 290, but we would also just point to the physical
7 division's indication that they haven't made that
8 determination yet. And so it would be premature to say
9 there will be no physical impact, um, when at this
10 point, as of today, there has not been that
11 determination by the physical division.

12 THE COURT: You know, based on their history,
13 they -- they -- they routinely pass criminal laws, uh
14 -- uh, you know, just an example, all the new laws on
15 DUIs back in the '80s and all the new laws on domestic
16 battery, zero physical impact is what the legislature
17 said and I -- I call them -- this was in -- back when
18 we had the smoking, uh, initiative and referendum and
19 I'm -- I'm talking, this has been 20 years ago now.

20 And I said, how can you do that? I mean, uh --
21 uh, just the domestic battery and the DUI new statutes
22 probably tripled the number of staff that were needed
23 by justice courts and even district courts. And they
24 said, well, they're already there, we're just giving
25 them a greater, uh -- uh, workload, so there is no

1 physical impact.

2 Uh, so I don't -- you know, that -- I -- I -- I --
3 - I don't know what your response to that is, but I --
4 I -- when you say that the legislature hasn't come out
5 with one, they routinely put zero on these kinds of
6 statutes. So --

7 MR. MORRIS: Th- -- thank you, Your Honor. If I -
8 - if I may respond, that's one of the reasons why we
9 included the physical note of 290 --

10 THE COURT: Mm-hmm.

11 MR. MORRIS: -- because that is tangible evidence
12 that there will be a physical impact associated with
13 regulating earned wage access services as lenders.

14 THE COURT: Well, the legislature hasn't issued a
15 -- an impact yet, have they?

16 MR. MORRIS: Not on the petitions.

17 THE COURT: You said no. Yeah.

18 MR. MORRIS: But the petitions explicitly refer
19 to, uh, my client, which is, uh, an EWA service
20 provider --

21 THE COURT: Mm-hmm.

22 MR. MORRIS: -- and again, that's Section 15.

23 THE COURT: You -- you attached an executive,
24 what was it -- it wasn't the legislative counsel
25 bureau's estimation of what the physical impact was,

1 it was -- what was it that you attached?

2 MR. MORRIS: We attached a physical note from the
3 financial institution's division and that was attached
4 to Senate Bill 290 and that's the equivalent of what
5 the LCB Physical Division attaches to initiative
6 petitions.

7 THE COURT: Mm-hmm.

8 MR. MORRIS: Now, there are some -- there are
9 constitutional referenda that are, uh, filed this
10 election cycle and we do refer to this in our -- in
11 our reply to the, uh, circulator's, um, response where
12 LCB has said that there will be physical impacts. And
13 so we cite to you, for example, um, constitutional
14 initiative number 1, 2023 where the --

15 And this is filed for, uh, consideration in -- in
16 this, uh, election cycle where LCB says, we just
17 cannot make the determination. But we also cite to,
18 uh, initiative -- uh, constitutional initiative number
19 3, 2023, um, and there the LCB Physical Division did
20 say that there will be a -- a financial impact.

21 THE COURT: What was that? I don't --

22 MR. MORRIS: That is the --

23 THE COURT: -- and I will say I wo- -- I've heard
24 one or I'm going to hear one -- another one of these
25 as well. What was the initiative and referendum?

1 MR. MORRIS: -- that is for the, uh,
2 constitutional amendment, uh, to, uh, apportion -- um,
3 apportion members of the Nevada Legislature and
4 Nevada's representatives. It would require -- it's the
5 independent, uh, redistricting commission. And we
6 simply argue --

7 THE COURT: That obviously would cost money.
8 Yeah.

9 MR. MORRIS: -- and we -- we ar- -- we argue that
10 these petitions too would obviously cost money,
11 because Senate Bill 290 says earned wage access
12 service providers are exempt from lending statutes and
13 here's the physical note where regulating them under a
14 very, uh, narrow jurisdiction still is going to cost
15 the state \$160,000 a year.

16 THE COURT: Well, you -- you know, the problem I
17 have is is the legislature says zero, uh, just li- --
18 uh, when they passed the no smoking laws, uh,
19 obviously, it was going to require more law
20 enforcement to enforce that and more regulators,
21 legislature said zero. So I --

22 MR. MORRIS: And --

23 THE COURT: -- you know, what you and I would
24 think obviously is going to cost the state money, the
25 legislature routinely says, no physical impact. So I -

1 - that -- that's why I -- I called the legislative
2 counsel bureau when I was -- and I said, how can you
3 guys say there's no physical impact the statutes --
4 with criminal statutes like this?

5 And they said, well, people are already there, we
6 just give them a bigger workload, it doesn't mean
7 we're going to have to spend more money. That was
8 their response to me. So anyway, go ahead.

9 MR. MORRIS: -- well, as a -- as a related
10 matter, Your Honor, um, going back to, again, our --
11 our challenge is specific to Senate Bill 290 and I
12 would just note that Senate Bill 290 was subject to a
13 2/3 super majority vote and the reason is because the
14 physical impacts require new revenue --

15 THE COURT: Okay.

16 MR. MORRIS: -- and -- and it -- the bill did, it
17 -- it surpassed that 2/3 super majority. And so the
18 legislature felt strongly about not designating earned
19 wage access services as loans and as lenders to a
20 point where it passed by overwhelming majorities in
21 both houses and the governor signed it into law.

22 THE COURT: Okay.

23 MR. MORRIS: And that is -- that relates not only
24 to the physical effects, Your Honor, but also to the
25 referendum point that we make, uh, if an opponent of a

1 bill that passed by overwhelming majorities doesn't
2 like what the legislature did, they have a lot to risk
3 by running a referendum on a bill that was that --
4 that was that popular.

5 And so the petitioners say in their briefing,
6 well, it's up to us to decide if it's a referendum or
7 if it's an initiative petition. That cannot be the
8 standard, because if you oppose a popular bill like
9 Senate Bill 290, you have much more at your disposal
10 by using the initiative process than you do you when
11 you're using a referendum, which is limited to a
12 thumbs up or thumbs down on what the legislature has
13 done.

14 THE COURT: Okay.

15 MR. MORRIS: Your Honor, unless there are any
16 questions, that -- that concludes our arguments.

17 THE COURT: No. No questions.

18 MR. MORRIS: Thank you.

19 THE COURT: Um, who else? Okay. Uh, now, that's,
20 uh, 29 and you're, uh, 21. So we still have 18,
21 Nevadans for Financial Choice and 23, Preferred
22 Capital Funding. Who wants to argue on --

23 MR. REISMAN: Uh, 23, Your Honor.

24 THE COURT: Okay.

25 MR. REISMAN: May I approach?

1 THE COURT: Go ahead.

2 MR. REISMAN: Good morning, Your Honor. It's Josh
3 Reisman on behalf of Preferred Capital Funding Nevada,
4 LLC and Alliance for Responsible Consumer Legal
5 Funding. Uh, Preferred is a license consumer
6 litigation funding company in Nevada and Alliance, or
7 ARC, is an industry coalition representing consumer
8 litigation funding companies in Nevada and I have with
9 me, uh, Eric Schuller, ARC's president, here in the
10 gallery.

11 The legal standards, I'll discuss and apply
12 today, are derived almost entirely from the Heller
13 [sic] case. So this is important, because the
14 defendants rely heavily on Heller as if it's a get out
15 of jail free card, but it's not and I'll demonstrate
16 that petitioners failed to satisfy even Heller's
17 requirements.

18 THE COURT: Heller versus who? Or who was -- who
19 was after Heller?

20 MR. REISMAN: It's -- it's -- sorry, Helton. I'm
21 saying Heller, it's Helton -- Helton versus Nevada
22 Voters First PAC and that's 512 P.3d 309.

23 THE COURT: Okay.

24 MR. REISMAN: Helton isn't a get out of jail free
25 card. The Court should be analyzing today's issues

1 within the framework of the policy purposes behind the
2 single subject and description of effect requirements.
3 Both requirements collectively serve the same purpose,
4 preventing voter confusion and promoting informed
5 decisions.

6 As for our single subject challenge, The Court
7 must first determine the initiative's purpose or
8 subject. It does this by looking at the petition's
9 textual language, descriptions of effect, the
10 defendant's arguments. Here, both petitions' textual
11 language states the following, "The Nevada revised
12 statutes are hereby amended by adding Chapter 604D,
13 the Preventing Predatory Payday and Other Loans Act.

14 "This chapter shall be construed to achieve its
15 purposes -- it's purposes which are combatting
16 predatory payday lending and other high-cost loans,
17 ensuring that out-of-state lenders cannot flout Nevada
18 law by making payday loans, other loans or
19 transactions at unlawful rates and protecting law-
20 abiding lenders from under-competition by predatory
21 out-of-state entities.

22 Similarly, the descriptions of effect will state,
23 "This measure addresses high-interest lending
24 practices by [Inaudible] maximum interest rates
25 charged to consumers and the proposed interest rate

1 cap would apply to consumer loans, payday loans,
2 titled loans and loan types dependent on future
3 earnings and income."

4 Helton -- not Heller, Helton -- Helton explains
5 that, "A subject -- subject is the overall thing being
6 discussed, the matter of concern over which something
7 is created."

8 Here, the thing being discussed, the matter of
9 concern is predatory lending. Investopedia defines
10 predatory lending as "any unscrupulous practices
11 carried out by lenders to entice borrowers from taking
12 out loans, they are unable to pay back reasonably or
13 must pay back at a cost that is extremely above the
14 market rate. Predatory lenders take advantage of
15 borrower's circumstances for lack of knowledge."

16 Consumer Litigation Funding -- my clients,
17 Consumer Litigation Funding, is not predatory lending.
18 Litigation funding companies are not lenders,
19 litigation funding does not create a loan, the Madame
20 in legislature told us this.

21 NRS 604(c) 220, uh, Sub 2 states, "Nothing in
22 this chapter shall be construed to cause any consumer
23 litigation funding transaction conforming to this
24 chapter to be deemed a loan or be subject to any of
25 the provisions of law governing loans. It is not

1 subject to any other statutory or regulatory
2 provisions governing loans."

3 The IRS also doesn't treat litigation funding as
4 a loan creating a debt for purposes of taxes. Funded
5 individual -- why is it predatory funded -- fund- --
6 funded individuals also are put in a position where
7 they're unable to reasonably pay back?

8 The funds were provided on a non-recourse basis
9 and the individual who's a personal injury plaintiff
10 in a litigation assigns to the funder a contingent
11 right to receive an amount of the potential proceeds
12 obtained for the plaintiff's legal claim. The funder
13 only receives payment -- only receives payment if the
14 individual recovers funds in their case.

15 Again, it's non-recourse. The cost also isn't
16 above the market rate. It reflects on the legitimate
17 risks associated with personal injury litigation,
18 financially desperate and sometimes undependable
19 plaintiffs, slow to pay insurance companies, disputed
20 liability, to be determined damages and policy limit
21 recoverability issues.

22 It also factors in the cost of money and
23 operating as a business. By statute, under 604(c),
24 charges may not be assessed at a rate in excess of 40
25 percent annually. Moreover, the funding actually adds

1 value to the plaintiff's cases by giving them a
2 lifeline so they don't have to sell prematurely for
3 pennies on the dollar.

4 The lifeline also actually saves them from having
5 to turn to predatory lenders and recourse loans to
6 sustain themselves. Litigation funding companies also
7 cannot take advantage of the individuals. By statute,
8 the contract must be written in clear language and
9 must contain written acknowledgements for the
10 individual's own attorney.

11 The per- -- the personal injury plaintiff's
12 attorneys are involved in the entire process and
13 approve the funding. Consumer litigation funding, as
14 it is curr- -- currently regulated under Chapter
15 604(c) is not predatory lending. Helton -- not Heller,
16 Helton explains that for the purposes of a single
17 subject requirement, "The proper consideration is
18 whether the legislative changes are functionally
19 related and germane to each other and the petition's
20 subject -- it's subject.

21 "Changes are functionally related and germane if
22 they work together to serve the initiative's purpose."
23 The effectiveness of one legislative change would be
24 limited without the other. The effectiveness of one
25 will be limited without the other. Here, amending

1 Chapter 604(c) to redefine litigation funding as a
2 loan and to reduce its APR does not serve the
3 petition's stated purpose of combatting predatory
4 lending, it's not predatory lending.

5 Further, amending 604(c) doesn't work together
6 with the petition's amendments of -- of lending
7 regulations to combat predatory lending. Failure to
8 amend 604(c) will in no way impact the effectiveness
9 of these other amendments pertaining to lending. In
10 addition -- uh, again, we're -- we're dealing with two
11 petitions here.

12 In addition, petition S1, unlike S3, also seeks
13 to shield people's savings and earnings from
14 garnishment, however, the effectiveness of shielding
15 people from garnishment won't be limited if consumer
16 litigation funding isn't recategorized as a loan and
17 its APR isn't reduced. Again, consumer litigation
18 funding is not a recourse.

19 People's savings and earnings don't need to be
20 protected from litigation funding. Now, despite
21 petition's and the description's focus on combatting
22 predatory lending, defendants argue that [Inaudible],
23 "Primary purpose is an overall program of consumer
24 debt relief."

25 However, thi- -- this can't be the case for

1 petition S3, which is focused exclusively to
2 combatting predatory lending from interest caps and
3 doesn't address judgment collection, they singularly
4 focus on -- on -- on -- on interest.

5 The -- the purported subject to -- regardless,
6 uh, the purported subject to "an overall program" --
7 an overall program consumer debt relief is excessively
8 broad, because it encompasses too much. In Helton --
9 again, Helton, the Supreme Court indicated the subject
10 "the mechanics of how voters vote would be excessively
11 broad, because it would include early voting, absentee
12 ballots, machine voting, paper ballots among other
13 things."

14 Consumer debt relief, what -- what could that
15 [Inaudible]? Not just rate caps and judgment
16 collection protections but loan forgiveness, rent
17 control maybe, raising the minimum wage, maybe even
18 universal basic income. These disparate subjects all
19 potentially relieve consumer debt and must fall under
20 this huge umbrella.

21 The -- the purported subject of an overall
22 program of consumer debt relief violates the single
23 subject rule for excessive generality. Regardless,
24 litigation funding doesn't contribute to consumer
25 debt. Investopedia defines consumer debt as

1 "consisting of personal debts that are owed as a
2 result of purchasing goods that are used for
3 individual or household consumption.

4 "Credit card debt, student loans, auto loans,
5 mortgages and payday loans are all examples of
6 consumer debt." Litigation funding doesn't create
7 personal debt, it's not a recourse. The individually
8 personally owes nothing, there's no debt owing. They
9 already assigned a contingent right to receive an
10 amount of potential proceeds obtained from their legal
11 claim.

12 Their personal obligations are satisfied upon
13 receiving the funding and making the contemporaneous
14 assignment, doesn't create personal debt. A litigation
15 claim doesn't contribute to consumer debt, it's not
16 functionally related and germane to the subject of
17 addressing consumer debt relief.

18 The petitions violate the single subject
19 requirement, because consumer litigation funding has
20 no connection with either predatory lending or
21 consumer debt relief. Treating predatory lending,
22 consumer debt relief, judgment collection and
23 litigation funding as one subject confuses voters and
24 will lead to ill-informed decisions.

25 Now, as to the description of effect, again,

1 they're insufficient. It was a description of
2 insufficient under Helton, because they failed to
3 clearly summarize the goals the petitions were
4 designed to achieve and how the petitions intend to
5 reach those goals. Helton explains the purpose of the
6 description of effect is to "inform signatories to the
7 initiative petition by the petitions' subject."

8 Here, there are at least two subjects, one,
9 combatting predatory lending and two, amending how
10 litigation funding is currently regulated to treat it
11 as lending and to reduce the permitted APR. The
12 description of effect discusses the first subject but
13 completely omits the second subject pertaining to
14 litigation funding.

15 The investment board told us in Las Vegas
16 Taxpayer Accountable versus City Council of Las Vegas,
17 208 P.3d 429, that the description of effect is
18 materially misleading if it identifies certain
19 consequences of initiative but fails to actively
20 identify other material consequences. Here, the
21 descriptions summarize the petitions' goal as
22 addressing "high-interest lending practice," but they
23 fail to summarize the other goal of addressing high-
24 interest non-lending practices.

25 The descriptions also explain that the goal of

1 addressing high-interest practice- -- practices will
2 be reached by, among other things, this is not in the
3 descriptions, "establishing maximum interest rates
4 charged to consumers."

5 Now, this is necessary, because they say,
6 "Currently, most consumer loans have no interest rate
7 cap" and two, by applying the cap to "consumer loans,
8 payday loans, title loans and other loans -- loan
9 types dependent on future earnings and income."
10 Nowhere -- nowhere is it mentioned.

11 Petitions also apply the cap to non-loan
12 transactions, such as litigation funding. Nowhere does
13 it mention they aren't "establishing a maximum
14 interest rate for litigation funding" because of the
15 Chapter 604(c). There's already a maximum APR of 40
16 percent for charges. The petitions actually reduce the
17 preexisting maximum APR for litigation funding, not
18 establish it. They reduce it, they don't establish it.

19 By omitting all mention of consumer litigation
20 funding, the descriptions fail to clearly summarize
21 the true -- the true material goals of the petitions
22 and how those goals will be reached. As a result,
23 petitions are materially misleading and thus violate
24 description of effect requirements in NRS 295.0091B.

25 The petitions violates single subject requirement

1 and have inadequate description of effect [Inaudible]
2 declare them invalid and enjoin them for placing
3 petitions on any ballot. Thank you, Your Honor.

4 THE COURT: Okay. And so we have one final. So
5 that was 23. Who's the last one?

6 MS. GRAVES: Good morning, Your Honor. Sihomara
7 Graves, um, from Kaempfer Crowell on behalf of Active
8 Hours, that is case 29.

9 THE COURT: Go ahead.

10 MS. GRAVES: Thank you, Your Honor. Active Hours
11 challenges the petition S3-2024 on 2 grounds. First,
12 it violates the single subject requirement, second, it
13 has a deficient description of effect. So Helton tells
14 us that in order to analyze whether a petition
15 violates the single subject requirement, we need to
16 look at the text of the initiative itself and the
17 description of effect to see what the stated purpose
18 is.

19 Here, both the initiative and the description of
20 effect give us the stated purpose. They say that the
21 stated purpose is combatting predatory payday lending
22 and addressing high-interest lending practices. Now,
23 the problem is that the initiative doesn't define what
24 it considers to be payday lending practices.

25 It doesn't define what it considers to be high-

1 interest lending. Those terms are defined in Nevada --
2 in Nevada law. Payday lending is deferred deposit
3 loans. High-interest lending expressly excludes
4 deferred deposit loans, title loans and refund
5 anticipation loans, yet, all of those types of loans
6 can be found within the purview of the initiative.

7 So [Inaudible] definitions of what the initiative
8 considers payday lending, what considers high-interest
9 loans, we can guess the initiative's purpose, which it
10 states is that it wants to address what it considers
11 to high-interest lending practices, but the initiative
12 includes, like I said, deferred deposit loans, title
13 loans, refund anticipation loans, which are by
14 definition not high-interest loans.

15 Not only that, it also includes earned wage
16 access services. Now, DailyPay has already gone
17 through and described how earned wage access services
18 are not loans. By statute, they are not loans, they
19 cannot charge interest, they cannot charge fees, they
20 are not recourse, the list goes on and how the earned
21 wage access services are not loans.

22 So how then are loans that are categorically not
23 high interest and transactions that are categorically
24 not loans and cannot charge interest functionally
25 related to a stated purpose of combatting predatory

1 payday lending and addressing high-interest lending
2 practices? They are not. So I think the petitioners
3 realize that the various different subjects within
4 their initiative don't fall within their stated
5 purpose.

6 So instead, they come up with a new stated
7 purpose, consumer debt relief generally. Their purpose
8 is now, rather than what they say predatory payday
9 lending, is consumer debt relief, but the problem with
10 this is that [Inaudible] tells us your -- you can't
11 escape your stated purpose by coming up with one that
12 is so broad that any category of things could fall
13 within it and that's exactly what the petitioners are
14 doing here.

15 They have come up with consumer debt relief,
16 because if we read their initiative, any transaction
17 that involves money that's going to a consumer for a
18 condition -- and -- and it says -- and it says any
19 condition, they categorize as a loan.

20 So in order to fit all of those transactions into
21 a supposed stated purpose, they come up with this
22 purpose of consumer debt relief, but if The Court
23 looks at Las Vegas Taxpayers Accountability, um, at
24 125 Nevada 181, case law tells us you cannot escape
25 the single subject requirement simply by coming up

1 with a purpose so broad that virtually any aspect of
2 life would fall within it and ActiveHours contends
3 that the stated purpose of consumer debt relief is so
4 broad that really, anything could fall within that
5 stated purpose and they can't get away with escaping
6 the single subject requirement in that manner.

7 And similarly, to what other plaintiffs have
8 said, the problem with the description of effect stems
9 from the single subject violation in the initiative
10 itself. They cannot, in 200 words, express all of the
11 various changes that they're trying to make to really
12 inform a voter of what's happening, because there's
13 just so much going on.

14 The description of effect says that it's intended
15 to address high-interest lending, but again, it
16 includes deferred deposit loans, which are not high-
17 interest loans. So how would the consumer know -- how
18 would an -- uh, an elector know -- or I'm sorry, a
19 voter know that the initiative includes deferred
20 deposit loans, which are, by -- by definition, not
21 high interest?

22 And again, the same is true with earned wage
23 access services. Nowhere does the description of
24 effect inform a voter that it's going to be dealing
25 with non-loan items? It expressly states just high --

1 just loans, just lending. Earned wage access services
2 are neither. They don't have, uh, interest, they are
3 not loans, they don't charge fees, they are non-
4 recourse and they don't create consumer debt.

5 So in no way does that subject fall within the
6 initiative's stated purpose, either the one that it
7 states itself or the one that petitioners come up with
8 in their briefing and because of that, the description
9 of effect is also flawed, it doesn't cover all of the
10 things that the initiative sets out to do. If you
11 don't have any other questions, Your Honor, I'm done.

12 THE COURT: I have none.

13 MS. GRAVES: Thank you.

14 THE COURT: Thank you. Okay. So --

15 MR. SCHRAGER: Good morning, Your Honor.

16 THE COURT: Mr. Schrage.

17 MR. SCHRAGER: Bradley Schrage for the -- the
18 only [Inaudible] defendant in some cases and
19 interveners in other cases and [Inaudible], uh, in
20 Stop Predatory Lending Nevada. I seemed to have, uh,
21 attracted a crowd, good for me, I must be doing
22 something right. You know, uh, the first thing I want
23 to say is that -- is that all of the -- all of the
24 plaintiffs on [Inaudible] will say this covers too
25 much ground.

1 I want to be clear, what they have said about is
2 it covers [Inaudible] ground. It covers exactly as
3 much ground as the law permits, but -- but no -- uh,
4 and as I say in the brief, no industry wants to be
5 targeted in this sort of thing in any effective
6 business model or their bottom line, but, uh -- uh,
7 their -- their -- their [Inaudible] is essentially
8 frenetic; right?

9 So I will -- I will, uh, go over [Inaudible]
10 number of points. I'm not going to chase every stray
11 bullet fired from the four parties. I will get to most
12 of those points, but not all of them. My task here is
13 essentially -- because the [Inaudible], their burdens
14 will show that this -- these initiatives -- both of
15 them are clearly invalid is a -- is a [Inaudible].

16 Uh, all I have to do is show under the
17 [Inaudible] that we've met the procedural requirements
18 for statutory ballot measures in Nevada. And I want to
19 address one thing right away, because Mr. Bice, at the
20 top of this, uh -- uh -- uh, of the session put into
21 [Inaudible] and, you know, I always like when -- when
22 opposing counsel tries to impugn or guess at the
23 motives of myself or my client, because then I get to
24 get up and refute them in real time.

25 So the question is why are there two initiatives?

1 And Mr. Bice says, well, clearly they're trying to
2 pull out a [Inaudible]. Uh, by the time I'm done with
3 my presentation today, nobody in this room will doubt
4 the commitment of my clients to both of these matters.
5 Here's why there's two of them, because [Inaudible]
6 ballot measures in Nevada are the people acting in
7 their legislative capacity.

8 So they are essentially acting with all the
9 powers that a legislature would have, acting in its
10 usual purview within a section by [Inaudible] all
11 those things, except it's not the same, because you
12 can't procedurally become a legislature. There's no
13 convening meetings. Once handed in, the petition can
14 be easily amended without restarting the process.

15 There's no -- there's no expert testimony,
16 there's no horse trading; right? There's none of the
17 hallmarks of what happens in the 120-day session. So
18 what my clients and what the initiative proponents in
19 general can do is propose more than one, because we're
20 only given a short window in which to propose these
21 and execute them and they cost money.

22 These are -- these are -- these are -- these are,
23 uh, projects of tremendous energy, time and money, uh,
24 and resources that -- that they eat up. It says, I
25 mean, that to -- to, uh, decide at -- at one

1 particular moment this is what we're going with, any
2 [Inaudible] has both the right and if they feel
3 [Inaudible] to their own constituents to pursue more
4 than one housing at once if it's within the bounds of
5 the single subject rules and the description of effect
6 rules and all those other things.

7 That's what my client has done here, but as I
8 reiterate, absolute commitment to both of these
9 initiatives. And here's a bit of this, uh, sort of
10 under- -- uh -- uh, underbidding as to why that's
11 true, recent study by the Pew Foundation ranked in
12 about 47th in its consumer -- consumer debt
13 protections.

14 That sounds a bit like Nevada's education record,
15 not good. The other thing, here's what [Inaudible],
16 debt claims are the single-most common type of civil
17 claims in Nevada. Debt collection makes up 38.7
18 percent of the civil claims in Nevada. That's more
19 than landlord-tenant filings and all other civil
20 filings, the single greatest civil case category
21 clocking the courts of Nevada are collections.

22 Seventy percent of those are won by default
23 largely because debtors can't afford to get attorney
24 [Inaudible]. It's not worth attorney's time to defend
25 them. In fact, less than 10 percent of the people sued

1 under debt can afford a lawyer, this comes from the
2 same study. These initiatives were proposed to address
3 some of that, because this is the lifespan of debt.

4 We've -- we've heard talk from the perspective of
5 the plaintiffs, here's -- here's -- here's why our
6 services are important, here's why -- here's why we're
7 defined in this way, here's why, uh, this is -- this
8 cannot stand. What The Court needs to do here is look
9 at this from the perspective of a debtor, who in this
10 state, in times of need, may have to take on emergency
11 or other kinds of financial instruments for which
12 [Inaudible] we [Inaudible].

13 In fact, the very existence of these plaintiffs
14 shows that there's profit in this; right? Nobody --
15 nobody gives out money and expects nothing back, that
16 would be -- that would be admirable [Inaudible];
17 right? So the lifespan of debt is to heed that money,
18 agree to receive it from somebody who has it and is
19 willing to give it to you at interest.

20 It doesn't matter if it's non-recourse, it
21 doesn't matter -- they're -- the money that comes back
22 to the lender -- to the -- to -- to the financier is
23 greater than the money they give out, that's interest.
24 That's the money that you pay for even in earned wage;
25 right? You are -- the -- the -- the whole thing about

1 the earned wage access is I would give you your money
2 before your employer does for a fee.

3 You will pay for your -- for -- for the money you
4 have earned, because you need it now and that's really
5 what we're talking about, people who are in need and
6 most people who are in need and go into debt in this
7 state can pay exorbitant interest fees, whether it's
8 40 percent on consumer -- or on -- on litigation
9 funding or whether it's 50, 80, 300, up to 500 percent
10 on payday loans.

11 Those oftentimes can end up in a spiral, which
12 someone can't pay back. And so they find themselves in
13 debt collection and in Nevada, the debt collection
14 practices, uh, are avaricious.

15 The protections of people's existing assets, my
16 clients believe, are insufficient, but as a package, I
17 don't think anybody could plausibly say that someone
18 who -- who will -- who will pay only 36 percent
19 annually now on financial instruments expecting
20 interest back, right, based on later income or
21 earnings and who has a larger expanse of assets
22 protected when someone [Inaudible] who cannot say
23 those individuals are not in a better place and that
24 there is not a [Inaudible] running from my need to my
25 loan to my inability to pay it back because I'm still

1 in need.

2 I'm [Inaudible] class of individuals who -- who -
3 - who -- who -- who experiences this need, because
4 let's face it, rich people are not using these
5 services. So -- and -- and then finally, what am I
6 going to have left after collections? What these
7 initiatives are doing is it's [Inaudible] the expanse
8 of dry land around debtors when the waters begin to
9 rise.

10 These plaintiffs are happy to sell you a
11 tourniquets when they're already bleeding. What these
12 initiatives are trying to do maybe -- maybe -- and we
13 don't need grandiose claims that this is going to pull
14 people out of poverty when they have a -- have a --
15 have a -- have a [Inaudible] debt after this, but
16 maybe this will alleviate or cause individuals not to
17 suffer a wound to begin with.

18 You know, I go, uh -- I go up to Carson City 3 or
19 4 times a year and I've been doing that for 15 years,
20 because like Mr. Bice [Inaudible] himself, I have been
21 doing ballot measure cases for a very long time and
22 this is the place you come. This is where you go.

23 So I come up here three or four times a year and
24 sort of like, you know, when you only see your nieces
25 or your nephews every six months, you know it's have

1 they gotten taller, has their personality changed,
2 what are the things that are different about them, did
3 they get braces?

4 Even when you live in Carson City, it's -- it's a
5 little slow to see the changes, but there's an
6 unmistakable phenomenon [Inaudible] the streets of
7 this city, especially on the north side [Inaudible]
8 every block, every strip mall has a payday lender or a
9 Checks Cashed or a [Inaudible] or Discount Drugs.

10 We are a booming bus state. This is the bus side
11 of it and these initiatives were filed to alleviate
12 just a little bit of that. You know, somewhere in the
13 big book -- I'm not a -- I'm not a faithful reader,
14 but somewhere in the big book it says, the poor will
15 always have [Inaudible].

16 Consequently, the poor will always have such
17 people with them and that's why this is an important
18 initiative; you know? So I want to talk about the
19 weight of initiatives [Inaudible], which as you know,
20 because you've been doing this a long time -- well,
21 uh, longer, actually. You -- you predate 295.009 as
22 far as doing these sorts of cases.

23 THE COURT: Well, I started in 1994, I have --

24 MR. SCHRAGER: Exactly.

25 THE COURT: -- I was counsel for the, uh, term

1 limits. So that's the first initiative and referendum
2 I did. I argued that in front of the Supreme Court.

3 MR. SCHRAGER: So -- so -- so that's [Inaudible]
4 in the middle [Inaudible] that the judge's -- turns
5 out it's right that knows the U.S. term limits --

6 THE COURT: Mm-hmm.

7 MR. SCHRAGER: -- and there was, uh -- there was,
8 uh -- uh, it was really after the turn of the century,
9 uh, pardon the phrase --

10 THE COURT: Yeah. That phrase.

11 MR. SCHRAGER: -- it was after -- it -- it -- uh,
12 it was after 2005 when the single subject rule was
13 codified and then all the sudden there was -- there
14 was -- there was the -- there's the, uh, you know,
15 [Inaudible] case --

16 THE COURT: Mm-hmm.

17 MR. SCHRAGER: -- and the Las Vegas Taxpayers
18 case and Pistol [ph] case and there was, um -- uh,
19 Commerce Tax, the Education Initiative and all the way
20 down. And so the jurisprudence regarding single
21 subject and description of effect went through
22 literally two decades of development; right?

23 Prior to this, there was a common law rule, but
24 in 2022, when Helton was issued, in some ways, we
25 reached a culmination.

1 The Supreme Court had -- you could sort of feel
2 an exhale and this is our statement after 20 years of
3 looking at all these cases in the divergence
4 [Inaudible], this is our case and, uh, you know, I
5 didn't, uh -- uh, I was surprised to hear Mr. Bice
6 talk about our -- our involvements in that case,
7 because I like to think of ourselves as vessels for
8 legal arguments as opposed to people who [Inaudible];
9 right?

10 Even [Inaudible] stand up and said, you said the
11 opposite thing two years ago, you know, but fair
12 enough. I'm going to characterize Helton definitely,
13 as he did, I was there too, but we'll get to that in a
14 minute, because I want to talk about, you know, your
15 other notes, that the right of initiative is a broad
16 one and that your task, the task [Inaudible] generally
17 is to protect and facilitate it and to make every
18 effort to protect it.

19 So in essence, doubts go to the runner. Now, uh,
20 what they want to dispose of right off the bat, we
21 talked about how initiatives are -- the people had to
22 [Inaudible] legislative [Inaudible]. We've heard an
23 awful lot about, you know, under statutes, our
24 transactions are not loans, EWAs are not loans,
25 litigation funding is not loans.

1 Well, who told you that? The legislature did;
2 right? Well, if the legislature can define your
3 transaction as a loan, the people can define it
4 otherwise, because what -- as -- as -- as much as I
5 have respect for the legislative process or for the
6 ability of lobbyists to interact with politicians and
7 [Inaudible] to create legislation, my clients were at
8 that table, they're at this table and they get to have
9 a say.

10 The fact that initiatives exist largely is
11 because of frustrations of the legislative process.
12 They exist, uh, as the -- as the, uh -- as the Nevada
13 Supreme Court said in [Inaudible], to enact
14 legislation independent of a legislative assembly and
15 I might add for the benefit of -- of my [Inaudible],
16 sometimes [Inaudible] contravention of what the
17 legislative assemblies had determined previously.

18 So the fact that there's no statute that says
19 something different is absolutely not important to
20 [Inaudible] of the initiative. My clients and the
21 people of Nevada get to enact legislation that affect
22 other legislation. Is that all legislation does? That
23 is entirely unsurprising, but it is not This Court or
24 the plaintiff's role to -- to -- to discuss new wisdom
25 of any proposal that comes before you as a ballot

1 measure.

2 That's for [Inaudible]. That's for -- that's for
3 politics. In fact, I want to point out every argument
4 they made about, uh, the -- the -- the -- the
5 importance of their services, how many people
6 [Inaudible], how great it is to be able to get an
7 earned wage access [Inaudible], all those things?

8 They can shout that through the rooftops. They
9 can hire [Inaudible] in the sky, they can do all of
10 those things, they can't make us put that into a
11 description of effect. That's not how this game is
12 played. This is the pre-election generals. Now,
13 there's only two [Inaudible] challenges that are
14 available today, it would meet the procedural
15 requirements and is this an initiative, uh, as opposed
16 to something that can't be done by direct democracy?

17 You know, I haven't heard much today that gets us
18 to no on either of those questions. But back to
19 Helton, Helton is now this sort of keystone case for
20 all of us. You've heard lots of people talk about that
21 they think [Inaudible] and I urge The Court, if you
22 have [Inaudible], to look at its terms, uh, very, very
23 closely.

24 Did it set finally in -- or probably a long time
25 [Inaudible] the basic analysis that The Court

1 undertakes for a single subject, it set out the basic
2 analysis [Inaudible] for its description of effect.
3 All those things are there. It also indicated a
4 certain liberality, because while Mr. Bice described
5 the changes in Helton as, you know, sort of obviously
6 interlaced, they [Inaudible].

7 What was at stake in Helton was an initiative
8 that on the one hand had top-five [Inaudible], a
9 complete rewriting of Nevada nomination law. On the
10 other hand, at the same time is that not only
11 [Inaudible], [Inaudible] general election. Now, one of
12 the arguments of the Supreme Court was, well, you can
13 do either of those independently, you could pass
14 initiatives or propose an initiative that just deals
15 with open primaries.

16 Yes, [Inaudible], you could pass an initiative
17 that it just [Inaudible] voting in the fall. Yes
18 [Inaudible]. Aren't those two different subjects? The
19 answer came back no; right? They're in -- they're
20 dependent upon one another. You don't have to have
21 [Inaudible] primary to do open choice voting.

22 You don't have to then go to an [Inaudible]
23 writer to [Inaudible] choice voting. [Inaudible]
24 dependent upon each other, but because they operated
25 under a framework on -- of "how we elect certain

1 officials," that was the purpose of the Supreme Court
2 that came up. That's pretty broad.

3 Now, how the election rules could also be all
4 these other things, do we do early voting, do we do,
5 uh, you know, uh, save your registration, um, should
6 we have [Inaudible] to 17 different coun- -- all those
7 things could be under how we elect certain officials.
8 That didn't -- because that could've been true.

9 It didn't invalidate the purpose of the
10 [Inaudible] where it's at. Now, the reason I know the
11 Supreme Court is sort of like, this is our state, is
12 that two weeks ago at [Inaudible] in the Washington
13 case, which was a ballot measure case in which a
14 single subject violation had been done, all six
15 justices that participated -- one had -- had -- had
16 refused to render a ruling, all six justices reached a
17 point of exasperation that said essentially,
18 [Inaudible].

19 They're not looking at us anymore. This is the
20 test, you find a purpose, define the elements or
21 components of the initiative, related function into
22 the purpose, if so, we're done. Same thing with
23 description of effect.

24 Well, that's what Helton did and in two obviously
25 separate components of the election process, we held

1 to inhabit the same subject for purposes of -- of --
2 of -- of the voters being able to, uh, get [Inaudible]
3 -- or -- or proposing [Inaudible] and people didn't
4 [Inaudible].

5 If those can be held under the same [Inaudible],
6 it is certainly true that capping interest rates on
7 consumer loans and protecting their assets from
8 collection on those same loans must inhabit the same
9 rubric or certainly [Inaudible] not to, which I think
10 is equally as important. So enough preface, let's get
11 to the single subject.

12 [Inaudible] has been pointed out, though with a
13 certain [Inaudible], very specific, uh, analysis that
14 This Court undertakes. Now, a single subject is there
15 to prevent multiple unrelated provisions and to
16 [Inaudible] and that word came up here a couple times.

17 I want to -- I want to point out what log rolling
18 is, because once again, Helton gave the definitive
19 statement of what the Supreme Court says is log
20 rolling and it -- it -- uh, it [Inaudible] the log
21 rolling. It's not that there are multiple changes in
22 law that a particular petition or petitions, uh, put
23 in place.

24 That's not log rolling. Log rolling in- --
25 involves smuggling, that you're hiding an unpopular

1 provision in other popular provisions so that you may
2 pass the thing that could not on its own get
3 [Inaudible]. [Inaudible] and just as in Helton when
4 The Court said, we can't identify which of these is
5 more popular than the other, we -- we -- we couldn't
6 identify that open primaries is more popular than
7 [Inaudible] choice voting.

8 So then the log rolling [Inaudible]. In fact,
9 it's -- it's -- it's impossible even to say that the
10 [Inaudible]. Who wants to play that analysis here?
11 Which of these, I guess, two components, the writ cap
12 or the -- or the protection of assets in collection --
13 which would be more popular? It strikes me that people
14 who go into debt and would pay less on that debt would
15 be particularly appreciative of protection of their
16 assets should they not be able to repay that debt.

17 You certainly couldn't say that there's some
18 obvious split in the [Inaudible] one would get a
19 majority of the other one. There's so -- let -- let's
20 just get right off the bat [Inaudible] log rolling. So
21 Helton's specific analysis and the charge to this
22 [Inaudible] is they're first playing the [Inaudible]
23 and you do that from text, the arguments and the
24 description.

25 Once you've established that purpose, then you

1 move to the two analyses of the components of the
2 initiatives. So they would say, uh, sort of
3 [Inaudible] straight off, um, it doesn't matter how
4 many changes of law there are, it doesn't matter how
5 many NRS chapters or sections are implicated by the --
6 by the, uh -- by the issue or initiatives.

7 Um, I hate to keep going back to Helton, uh,
8 [Inaudible] how many NRS sections are going to have to
9 be annulled and wiped away by utterly overhauling the
10 primary and the general election procedures?

11 Dozens of these, which goes not only to the fact
12 that you don't ever mention them, because they aren't
13 inherent, but [Inaudible] as [Inaudible] full text
14 [Inaudible], nobody in Helton, especially not Mr.
15 Bice, uh, thought he had to append every single
16 section that was going to be touched by the changes
17 proposed in Helton.

18 It isn't just cumbersome, it's just -- it's just
19 -- that's just not [Inaudible] the full textual
20 requirement -- requirement, but -- but we'll get to
21 that in a minute. In general, as long as the scheme of
22 the initiatives operate as a framework and the -- and,
23 uh, as long as it articulates an overarching purpose
24 to which those are related, the single subject, uh,
25 recorded is satisfied.

1 Now, go back to Helton, this barely is the case.
2 It, uh -- you know, I'll start with the first
3 initiative that includes two components [Inaudible],
4 because I don't think that the -- the second issue
5 [Inaudible] question at all, this notion that, well,
6 uh, you know, [Inaudible] various kinds of
7 transactions.

8 Yes, with one rate cap. All the -- all the
9 matters that are defined as a loan within the second
10 initiative are subject to this rate cap. That's its
11 purpose, limiting interest rates on consumer loans and
12 the fact that -- that all of them -- or, uh, at least
13 three of those, like I say, but -- but we're not loans
14 currently is immaterial, because [Inaudible] didn't
15 get to vote on whether or not these transactions will
16 be considered loans for these purposes.

17 And I want to stress that, because we're not
18 repealing SB-290, we're not overhauling everything
19 having to do with the business, these transactions
20 that have what can be interpreted as interest rates
21 attached to them will be limited. And you know, some
22 will say, we don't charge interest at all, we don't
23 even have recourse.

24 Well, what are you doing there then? What are
25 doing there? We don't charge interest. Well, I guess

1 36 percent isn't a problem for you. So I don't -- I
2 don't -- I don't really see that there's a single
3 subject problem with the second initiative, it's
4 [Inaudible] it carries a 36 percent cap, it's -- and
5 it's enforced with mechanisms that serve that cap,
6 it's in- -- uh, in- -- uh, including [Inaudible] for
7 business a [Inaudible] sort of [Inaudible] opt-outs
8 from the, uh, DIDMCA.

9 Number one, that's described in the description
10 of effect exactly what that does and number two, this
11 is -- this is not some -- some -- some -- some wild
12 change that people, uh, you know, are going to be
13 shocked to see, this is what -- what's teed into the
14 initiative. What that opt-out does in Section 545 on
15 that federal act permits states in legislation action
16 to opt-out.

17 And what the opt-out is is it prevents what's
18 called [Inaudible], which is a bank from out of state
19 employed their state's interest rate into your state
20 so that banks here essentially borrow West Virginia or
21 Michigan or somewhere else -- or -- or Alabama's
22 interest rate. They use it to [Inaudible] the rate cap
23 here.

24 It's an enforcement act that essentially permits
25 initiative number two to exist. Otherwise, people will

1 simply say, yeah, that's a great, nice little interest
2 rate cap you've got there, we're going to use
3 Mississippi's instead. So thanks for wasting your
4 time. So not only is that function germane, it is
5 integral to the function of initiative number two.

6 Everything I say on initiative number two is also
7 true for number one with the additional component of
8 significant, uh, expansion of assets protected in
9 collection. That's why I think that if you were to say
10 that the primary subject of number two is limiting
11 interest rates on consumer loans [Inaudible] the best
12 statement of the primary purpose and subject of
13 initiative number one with two components is the
14 [Inaudible] of consumer debt.

15 It follows the lifetime of consumer debt from the
16 perspective of someone who needs that money, has
17 already [Inaudible] circumstances and may have
18 difficulty paying it back. That's the straightforward
19 analysis that This Court needs to make is are the
20 peti- -- are -- are those portions related to that
21 subject?

22 It's -- it's -- it's -- I'm literally at a loss
23 [Inaudible] why [Inaudible] rating the conditions of
24 the collections of your loan when you can't pay it
25 back is not related to capping the loan itself. Maybe,

1 just maybe if people had to pay less to get the money
2 they desperately need; right? It's only going to -- I
3 think that there's a reason, uh, brought up the notion
4 that -- that -- that these people are desperate need.

5 Yes, they are in desperate need, that's why
6 they're also using [Inaudible], right, for -- for some
7 high interest rates to try to lower that threshold,
8 but clearly, if you have -- if you can get a loan at a
9 lower interest rate, you have a better chance of
10 paying it back, but if you don't, you shouldn't go
11 broke in a spiral of debt with no access.

12 To go to the -- to the -- to the asset protection
13 portion itself, Mr. Bice points out, well, yeah,
14 they're limiting all these -- all these -- all --
15 they're deleting all these sections of the -- of the -
16 - of the NRS that have protections within them, you
17 know, social security, all these other things and this
18 is absolutely [Inaudible].

19 What we've done is establish self-executing,
20 overarching protections that subsume and dwarf the
21 protections that exist in those statutes and those
22 statutes [Inaudible] that you have to itemize at the
23 point of a judgment. So you have to prove those --
24 those -- those exceptions that we've "deleted" anyway.

25 What we've done instead is say, all right,

1 instead of \$400, you get to keep \$5,000. Instead of
2 \$300, you get to keep \$8- -- or \$800 a week in a sort
3 of sliding scale up from there, protected from
4 garnishment or execution. The current protections that
5 are in law are puny compared to that. So it's not that
6 we're deleting them as if they don't exist anymore,
7 we're subsuming [Inaudible] into caps that are much,
8 much higher.

9 And the thought is, and I think it's a good one,
10 is that if in fact lenders know they could only take X
11 amount from your assets that number one, they'll be
12 more careful of lending and number two, there will be
13 less collection activity. You don't get better loans
14 [Inaudible] pay back.

15 THE COURT: I have a question.

16 MR. SCHRAGER: Yes, sir,

17 THE COURT: Doesn't that -- doesn't that apply to
18 more than just consumer loans, though?

19 MR. SCHRAGER: Well, if -- if --

20 THE COURT: What you're proposing, uh, is a -- I
21 mean, would it apply to -- if I sold my car to someone
22 and he didn't pay me and I went to colle- -- uh, tried
23 to get -- collect on the money that he owed me, it
24 would apply to that kind of situation too, wouldn't
25 it?

1 MR. SCHRAGER: Uh -- uh -- uh, under the terms of
2 this, yes.

3 THE COURT: Okay. So that doesn't make it a
4 separate subject?

5 MR. SCHRAGER: It doesn't.

6 THE COURT: Okay. Tell me why.

7 MR. SCHRAGER: Well, look, in collections, there
8 are already protections; right? I mean, if I didn't
9 pay you for your car and you went to go collect from
10 it, the thresholds that exist right now apply to that.
11 This is the precinct existing protections. This is in
12 establishing [Inaudible]. So for example, you couldn't
13 garnish if I didn't [Inaudible] and you [Inaudible] --

14 THE COURT: Well, it doesn't necessarily just
15 apply to the consumer loans that you're talking about,
16 the predatory whatever -- what'd they call it, pred- -
17 - predatory -- uh, your very first part of your
18 statement.

19 MR. SCHRAGER: Yeah.

20 THE COURT: Yeah.

21 MR. SCHRAGER: That doesn't take it out of the
22 subject, though, whether it's sort of, uh -- uh, if
23 I'm -- uh, if I'm in collections right now whether or
24 not, uh, it's a consumer loan or your car, you can't
25 garnish with an X amount of my wages right now, you

1 can't take my social security check right now.

2 This [Inaudible] expansion existing law rather
3 than establishes new law. So there's no -- essentially
4 no change in the law, no, [Inaudible] what you're
5 talking about. But I'd also argue, Your Honor, that
6 the absolute vast majority of these transactions are
7 commercial in nature [Inaudible].

8 THE COURT: Well, it doesn't just, uh, apply to
9 the loan, uh, this section that -- well, go ahead.

10 MR. SCHRAGER: Okay.

11 THE COURT: I tried to make my point.

12 MR. SCHRAGER: Let's move onto the description of
13 effect, which is just, uh, to prevent confusion and --
14 and [Inaudible] decisions and as we said, the sort of
15 holy trinity of the -- of the -- of the elements are
16 they must be straightforward, succinct and not ar- --
17 nonargumentative. They can't be deceptive or
18 misleading.

19 In essence, the test is have they aligned?
20 [Inaudible] sort of campaign politics that are better
21 off in -- uh, in -- in a commercial or a mailer or a -
22 - a political campaign urging people to support or not
23 support. Haven't we made a legitimate effort to
24 summarize the main components as what, uh, The Court
25 found in the Education Initiative Act and reiterated

1 it in Helton.

2 Now, The Court has long understood there was
3 [Inaudible] space here and that proponents cannot be
4 required to include every detail and we're prohibited
5 from engaging in hypotheticals. If you deem 100 people
6 these initiatives and said, come up with less than 200
7 words, which is probably what happens here, you can
8 get 100 different versions. Now, that's especially
9 true when financial interests are involved.

10 This does not have to be the best possible
11 statement. Challengers will always be able to point to
12 something that they would've done different. Courts
13 would always be able to point to something and said, I
14 would've done that differently. Here, we have a sort
15 of unique situation in which each of these plaintiffs
16 have said, why didn't you talk about us?

17 It'd be a pretty long statement if we had to go
18 through -- and, uh, the description of effect is not
19 meant to be a graduate pro-seminar in finance; right?
20 It's meant to be a legitimate good faith attempt to
21 describe the basic needs and content of an interest.
22 So let's go through them, it's not hard to do, they're
23 short, because I will -- I will stand on this
24 statement.

25 There are a few elements to each one and they're

1 clearly met. [Inaudible] the general statement of the
2 measure's purpose is the measure addresses high-
3 interest living practices by establishing maximum
4 interest rates charged to consumers and shields more
5 of people's savings and earnings from garnishment
6 [Inaudible] under current law.

7 Every bit of that is objectively true and is not
8 shaded, um, with any misleading argument of language.
9 Then they go to --

10 THE COURT: Okay. Is that -- that's the
11 description of effect of S-01; is that correct?

12 MR. SCHRAGER: Yes. In fact, um, [Inaudible] --

13 THE COURT: Which is different --

14 MR. SCHRAGER: -- both of them are identical and
15 it's, uh, just number one that adds, uh, the asset
16 protection aspects, uh, of -- of this last paragraph.
17 So the first three paragraphs of each of them are
18 identical.

19 THE COURT: Okay. Go ahead.

20 MR. SCHRAGER: So then they move onto a neutral,
21 accurate statement of current law regarding interest
22 rate limitations. Here it is, currently, most consumer
23 loans have no interest rate cap. Again, that's
24 objectively [Inaudible]. The proposed cap would set a
25 maximum interest rate of 36 percent annually on the

1 unpaid balance of the amount financed.

2 They would've financed consumer loans, deferred
3 deposit transactions or payday loans, title loans and
4 other loan types depending on future earnings and the
5 income. Every transaction that has been discussed here
6 today is dependent on future earnings and income, all
7 of that objectively true and in good faith statements
8 of what these are attempting to encompass.

9 Third, there's a statement of enforcement aspects
10 of the proposal. The initiative also prohibits evading
11 the interest rate cap, this is the opt-out provision,
12 by structuring transactions to max their nature as
13 loans covered by [Inaudible] or partnering with out-
14 of-state lenders to violate the rate cap.

15 This initiative voids transactions that violate
16 the cap and establishes civil penalties. [Inaudible]
17 directly and succinctly describes what the measures do
18 on one and two, especially the opt-out provision,
19 which -- which -- which, uh -- which Mr. Bice made
20 [Inaudible] this is actually a pretty good description
21 of what that thing is.

22 This is what we're doing, you cannot evade the
23 interest rate cap by partnering with out-of-state
24 banks, which the opt-out provision, uh, prohibits.

25 And then finally, uh, in number one with the

1 component regarding asset protection, it says that
2 additionally, the initiative automatically protects
3 \$5,000 of savings in a personal bank account up from
4 \$400 now, objectively true and \$850 in wages and any
5 [Inaudible], up from \$369, inarguably [Inaudible] as
6 well as a portion of [Inaudible] above that
7 [Inaudible] from seizure from a debt.

8 Those amounts would be indexed from [Inaudible]
9 periodically to [Inaudible]. I absolutely understand
10 that my colleagues don't like it, their clients don't
11 like it. I don't think anyone would say that doesn't
12 describe what these things do, that this isn't a good
13 faith given the limitations of space and context.

14 We haven't avoided [Inaudible], we haven't misled
15 anyone. This is as clear as [Inaudible] as it can
16 possibly be and the -- the -- the description in
17 number one is 176 words. So I think we've done pretty
18 well. All the things that are --

19 THE COURT: Uh, you know, I see -- for some
20 reason, I'm looking at two separate description of
21 effect for S-01 and S-03. The description of effect
22 for S-01 has the -- on the very first par- --
23 paragraph, has comma and shields most people's savings
24 and earnings from garnishment. I show that that
25 sentence isn't in the description of effect in S-03.

1 MR. SCHRAGER: I beg your pardon, Your Honor,
2 because that, uh, relates to the protection of assets
3 portion, that -- that clause --

4 THE COURT: Okay.

5 MR. SCHRAGER: -- that, uh, paragraph is
6 [Inaudible].

7 THE COURT: Okay.

8 MR. SCHRAGER: They're not identical. Yeah.
9 Substantially [Inaudible].

10 THE COURT: Try not -- try not to confuse me if
11 you can, sir.

12 MR. SCHRAGER: No. I [Inaudible]. No. That's --
13 that's an excellent catch.

14 THE COURT: Okay.

15 MR. SCHRAGER: Uh, so no, that's ended there.
16 It's also [Inaudible] objectively true without
17 question. So you know, within -- within the confines
18 of the space in our task here, this motion that we
19 should've discussed the opt-out more or we should've
20 talked about, uh -- uh, earned wage access
21 specifically among all the transactions or that we
22 should mention, uh -- uh, that -- that -- that
23 litigation funding is -- is, uh -- is -- is different
24 from earned wage access, this is not -- this is not
25 our task.

1 That's -- that's their task [Inaudible] paying,
2 uh, to persuade the amount of voters not to support
3 the measure, because every opportunity to do that --
4 they don't get to do that in our description of
5 effect. What we have told Nevada voters in the
6 description of effect is exactly what they would want
7 to know and we have done our job succinctly and
8 accurately.

9 I want to move on to, uh -- to what I would, uh -
10 - what I'll finish with, which is the -- which --
11 which, uh -- which -- which [Inaudible] the
12 miscellaneous kinds or beyond single subject and
13 description of effect. Uh, I will [Inaudible] claims.
14 Uh, let's start with the -- with [Inaudible] would be
15 unfunded [Inaudible].

16 In the entire [Inaudible] of initiatives in
17 Nevada, there have been -- well, one upheld -- well,
18 two upheld by the Supreme Court and one additionally,
19 last one, here in Nevada that you -- you know, the
20 redistricting commission that had been [Inaudible] for
21 unfunded [Inaudible], the violation of, uh, Nevada
22 Constitution Article 19, Section 6.

23 That's very, uh -- all of them, very different
24 than what we're talking about here and I can
25 understand your frustration, this notion that well,

1 you've passed [Inaudible] criminal laws, therefore,
2 cops are going to be busier; right?

3 THE COURT: Well, that's what the legislature
4 says when we say zero physical impact.

5 MR. SCHRAGER: That's right. That's right. And --
6 and you know, I understand [Inaudible] what you're
7 talking about, that's not the Nevada Supreme Court's
8 jurisprudence, as frustrating as that may be for you
9 or -- or -- or for [Inaudible]. That's not the
10 jurisprudence; right? The jurisprudence so far is
11 plaintiffs have to demonstrate what the [Inaudible]
12 would need to be and that it's mandatory.

13 The mandatory is the key here, because the
14 legislature could say, yeah, it might cause more work
15 for the police or the firemen, [Inaudible], it's not
16 mandatory. We're not going to have extra money, that's
17 the key to it.

18 The reason why these other [Inaudible] have been
19 -- have been invalidated, for example, redistricting
20 commission, which you agreed [Inaudible], because what
21 they determined is it created an agency -- a whole new
22 agency that would require staffing and -- and you --
23 and you would have to have people [Inaudible], you
24 have to have, you know, stuff to do, the things you
25 have to do during redistricting.

1 When you create an agency, and granted, you are -
2 - you are -- you're convening a situation where --
3 where appropriations must be made, that's -- that's
4 the level that it has to be at to cut off the people's
5 right to initiative, not just well, that's going to be
6 annoying and a problem and more work.

7 And as far as I could tell, we haven't really
8 heard anything sufficient enough to demonstrate
9 anything more than there's going to be more
10 regulation. That won't get you very far, because, you
11 know, look at me as, uh -- as, uh -- uh, as -- as
12 attorney for [Inaudible] proponent, what am I supposed
13 to do with that statement?

14 How do I clarify that? How -- it's sort of flip-
15 sided of this -- of this unfunded mandate [Inaudible]
16 is you should've put in a mechanism to pay for it;
17 right? Well, this [Inaudible] notion that there will
18 be more regulation doesn't provide me the opportunity
19 to cover it. Is that \$100,000? Is it \$3 million?

20 Uh, really, all that's happening -- you know,
21 they didn't say that this was, uh, wiping out all of
22 [Inaudible], none of that's happening. What's
23 happening is the transaction, along with all these
24 other transactions, is going to be subject to a rate
25 cap for its annual interest rate.

1 I literally described all of the things that
2 would have to be done, what they would cost, who's
3 going to do it and whether it's mandatory for the
4 legislature to make an appropriation as opposed to
5 boy, somebody better pay for it, because if it's boy,
6 somebody better pay for it, that's not [Inaudible].

7 Well, we put the two things in a balance. Article
8 9 -- Article 18, Section 6 saying we've got to have,
9 uh -- um, money to pay for the things that are
10 mandatory of appropriation in Article 19's general
11 powers of the initiative for people to -- to propose
12 in advance constitutional statutory or, uh -- uh, or
13 referendum measures, what wins out is you have to do
14 it.

15 If you have to do it, you need to pay for it and
16 you can point to it and prove it, you can [Inaudible]
17 my [Inaudible], they haven't done that. You may in the
18 pit of your stomach think, boy, that's, uh,
19 [Inaudible] that as a -- as a taxpayer, but that
20 doesn't -- that doesn't get you there. So there's no
21 [Inaudible] unfunded here.

22 They have- -- they haven't demonstrated that
23 there is. Let's move to the full text argument, which
24 I find is this one is also, um, adventurous. There's
25 never been a case from the Nevada Supreme Court that

1 has said if you -- if the thing you're proposing
2 affects something else, you have to append all the
3 other else's.

4 Here, they're just saying just append 290. I
5 think [Inaudible] append a bunch of other statutes,
6 maybe even some federal statutes. I guess, if you had
7 sort of larger [Inaudible], uh, initiative that made
8 it on to the single subject, you could have 3,000
9 pages worth of things you had to carry around to show
10 people so they could sign it.

11 This is absurd. What the -- what the -- what --
12 what 19.03 says is you have to contain in the petition
13 the full text of the measure you are proposing.

14 This is -- these are the measures we are
15 proposing, it is simple as that. In fact, this --
16 there -- there's a case that came through Judge
17 Russell's courtroom in the fall and it's in
18 [Inaudible] Supreme Court right now, there -- there is
19 a full text issue, but that was a referendum -- an
20 actual referendum, not a, uh -- not, uh, an accused
21 referendum, an actual referendum, uh, of a -- of a --
22 of a sort of large -- a 46 [Inaudible].

23 And what the referendum proponents did was
24 instead of putting in all 46 sections of the bill they
25 were having the referendum in, they just put in

1 portions of it that they wanted to highlight for the
2 voters and they put out an order. The Supreme Court
3 will likely say that's a full text violation.

4 If you're proposing a referendum, you have to
5 give the four corners of the referendum you're
6 proposing, because that's only going to provide the
7 context to the voters of the thing you're doing.
8 Everything outside those four corners is the
9 responsibility of either, um, you as an opponent to
10 raise or the voters themselves who are presumed to
11 know the law.

12 It cannot be argued not to -- to investigate, but
13 the idea that because this has some effect on other
14 statutory provisions, that the full text of all those
15 provisions and -- and if -- if -- if you accept it, I
16 don't think proponents -- or plaintiffs would stop at
17 the notion that it's just SB-290 [Inaudible]
18 everything they could possibly [Inaudible].

19 That's not -- that's not -- that's not plausible.
20 That's not a -- that's not a legitimate reading of
21 Article 19, Section 3. It would in fact, uh, far from
22 facilitate the people's right to initiative. It would
23 be an obvious obstruction of such. It doesn't matter
24 what happens, because just think about it, let's say
25 this [Inaudible] in SB-90 [Inaudible], what happens?

1 Well, if there's a case in which [Inaudible], as
2 you know, from a long time on the bench, there's a
3 particular judicial instruction involved in the facts
4 of this case as to whether something has been
5 expressly repealed, impliedly repealed or not repealed
6 at all. Can these two statutes live side by side? Can
7 they not?

8 That's what judges undertake when two statutes
9 conflict. It would be speculative without any facts in
10 front of us to go into that analysis now. And so the
11 notion that on the -- on the -- on the speculation of
12 what may happen to SB-290's terms years from now --
13 [Inaudible] SB-290 is ex- -- uh, is exempt from this
14 bill for 6 years -- from this initiative for 6 years
15 and has a sunset provision 6 years from now.

16 So the notion that -- that this is going to be
17 some destructive quality and -- and we have to address
18 it now on the speculative ideas of what would happen
19 or judicial instruction in some court in this state
20 over the next 6 years or -- or -- or further than
21 that, because it doesn't even apply for 6 years,
22 sometime in the 2030s, therefore, we'll need to append
23 SB-290 is, uh, simply not plausible and in no way, uh,
24 can -- can -- can furnish grounds for not permitting,
25 uh, this to go forward.

1 And then as our last claim, and then I know I
2 have some, uh -- uh, to a few -- uh, a few
3 miscellaneous [Inaudible], the last claim is that this
4 is a referendum as opposed to an initiative and this
5 is, uh -- this is not the case. Um, throughout the
6 initiative, it uses the word NRS XXX is hereby
7 amended, um, chapter such and such is hereby amended.

8 That's the end of the game right there, you
9 cannot amend the referendum. If there's some act on
10 another statute, uh, as I said, there will be an
11 opportunity for judicial instruction to deal with that
12 particular conflict. That's -- this is -- this is one
13 of the [Inaudible] jurisprudence. This is -- this --
14 this is a matter of course.

15 But a referendum is an up or down vote on the
16 entirety of a provision or even part of a provision,
17 but that's all it is, it can't be anything else. When
18 you are adding new law, which [Inaudible] we're not
19 doing, you are performing a statutory issue. You
20 cannot be held, uh, [Inaudible] a referendum beyond
21 that.

22 The referendums would be a different thing that
23 involves once you have a referendum, either a law
24 struck down or it becomes a law in perpetuity until
25 [Inaudible] vote of the people. It's a whole different

1 process. It only goes through one election, doesn't go
2 to the legislature.

3 All those things are what a referendum
4 [Inaudible], but basically, if -- if you are amending
5 a statute [Inaudible], which I think everybody here
6 admits is happening, for a statutory initiative. Okay.
7 Let me just -- let me sort of [Inaudible] --

8 THE COURT: Can you be -- be both?

9 MR. SCHRAGER: What's that?

10 THE COURT: Can you be both?

11 MR. SCHRAGER: Not at the same time. No. They are
12 on -- they are on different calendars. For example,
13 uh, a referendum can be proposed on August 1st from
14 the year preceding or [Inaudible] preceding and then
15 [Inaudible] signatures for the next general election.
16 Statutory issues can be proposed until Septe- -- uh,
17 until January 1st.

18 You have the entire year to gather signatures and
19 then they go to legislature and then to the general
20 election after that [Inaudible]. These two measures,
21 whichever one, or both [Inaudible], uh, wouldn't see
22 the, uh, general election now until 2026. So they are
23 -- they are completely different animals.

24 They are cousins of direct -- uh, of direct
25 democracy, they are not the same species entirely. Let

1 me see my list here. Yeah.

2 Uh, you know, just one more thing since -- uh,
3 two quick, if they wanted to drop copies of SB-290
4 from an airplane across Nevada, they are welcome to do
5 that and yell out off the top of their lungs, how dare
6 these people come anywhere near our precious SB-290,
7 right, that does not mean that we have violated the
8 full text.

9 Um, [Inaudible] clearly, we have not, but, you
10 know, it's -- one thing that this re- -- you know, Mr.
11 Reisman, uh, revealed when he was distinguishing
12 between number two and number one is now we're talking
13 about number two, because number one is both
14 singularly focused, eliminate interest rates.

15 That's exactly right, it is singularly focused.
16 That's why it doesn't, on its own, violate the single
17 subject, but the -- the additional component in number
18 two -- or number one, I'm sorry, of the asset
19 protection does not thereby, simply by virtue, adding
20 another component, violate the single subject rule,
21 because as The Court -- once again, in Helton, and I
22 will close with this, um, plaintiffs mistake changes
23 in law for subjects.

24 You can have as many changes as you want in an
25 initiative as long as they satisfy the very clear

1 analysis in [Inaudible].

2 So with that, I'll -- I'll -- I'll -- I'll answer
3 any other questions you may have. I -- I sort of
4 didn't get to the idea that a lot of these concerns
5 that they had [Inaudible]; right? We both know that's
6 [Inaudible] plays for substantive criticisms on the
7 thing, the thing itself.

8 Uh, this is a procedural exercise and the
9 substantive concerns, good, bad, indifferent, are the
10 future. We're here to exercise particular
11 constitutional rights, which my clients, uh, have very
12 clear [Inaudible] exercise. Is there anything to
13 answer for The Court?

14 THE COURT: Why did you propose two initiatives?

15 MR. SCHRAGER: As I, uh -- as I argue, we
16 proposed two not to cause any confusion of The Court
17 or to -- or to lead the court in one way or the other,
18 in fact, if This Court were to invalidate number one
19 and leave us with, uh, number two, it would be
20 incredibly frustrating; right? The reason why number
21 two is there [Inaudible] --

22 THE COURT: Uh, actually, three.

23 MR. SCHRAGER: [Inaudible]

24 THE COURT: So S-01 and S-03. So when you refer
25 to, you mean S-03.

1 MR. SCHRAGER: [Inaudible] I -- I believe it was
2 the first one and the second one, but yes.

3 THE COURT: Okay.

4 MR. SCHRAGER: As, uh -- as [Inaudible] is
5 because -- because -- because -- because it's in my --
6 the reason why there were two is unlike the
7 legislature, we can't easily amend.

8 We can't go back and change things or to start
9 all over. We can't -- you know, there's no committee
10 meetings, there's no experts that could come in and
11 testify to you; right?

12 We have, um -- any- -- anything of this nature,
13 just like legislation, involves stakeholders and
14 interested parties and, you know, it's -- it is not
15 necessary for a ballot measure proposal to decide once
16 and for all -- they're not limited to [Inaudible].
17 They don't have to decide once and for all on January
18 1st which of these policies they're going to pursue.
19 They [Inaudible] -- they -- they -- we're -- we're
20 fine.

21 [Inaudible] two more. They have a perfect right
22 to do that as long as they meet the procedural
23 requirements of the -- of the Nevada Constitution and
24 the associated statutes. So --

25 THE COURT: Why --

1 MR. SCHRAGER: That's why there's more than one.

2 THE COURT: -- why didn't you propose 3 with the
3 -- the last provision on, uh, protecting \$5,000? Uh,
4 why didn't you propose three with just that one in it?

5 MR. SCHRAGER: Yeah. So as -- as a suggestion, if
6 -- look, if you approve -- approve that, I'll go do
7 that later today.

8 THE COURT: They'd probably strike me if I did.
9 So --

10 MR. SCHRAGER: Thank you, Your Honor. And, uh,
11 I'm sorry, is there anything else?

12 THE COURT: No. We can take a break real quick, a
13 15-minute break. You can all be at ease.

14 [break]

15 THE COURT: Okay. I don't remember, uh, what
16 order we went in before, but, uh -- rebuttal --
17 anybody have any rebuttal?

18 MR. BICE: Uh, yes, Your Honor. This is, uh --

19 THE COURT: Okay.

20 MR. BICE: -- this is Todd Bice. Can you hear me
21 all right, Your Honor?

22 THE COURT: Yeah.

23 MR. BICE: Thank you. So I'll -- I'll -- I'll
24 endeavor to be very brief, Your Honor. Uh, my friend,
25 Mr. Schragger, started out his opposition with the

1 observation that no industry likes to be targeted and
2 I agree with him on that. The problem here, I think
3 the -- the fact that four different cases by, uh -- uh
4 -- uh, such a diverse population of impacted people is
5 what industry isn't targeted?

6 I don't think he actually answered that question
7 for The Court. The title of these initiatives are
8 payday lenders; right? And then -- then we suddenly
9 add on others -- other lenders, which by the way,
10 these other parties, as they have articulated, aren't
11 even lenders.

12 So, uh, we've got the boogeyman of payday
13 lending, that's in the title, that's in the first
14 sentence of the description of fact and then we've got
15 a [Inaudible] and that, by the way, I would submit is
16 the definition of log rolling.

17 You use the boogeyman to get the voter's
18 attention and then you throw in this, uh -- you know,
19 this, uh -- uh, assembly of different aspects and
20 different businesses that aren't payday lenders.

21 Uh, so are we regulating banks, are we regulating
22 payday lenders, are we regulating, uh, the consumer,
23 uh -- uh, or I'm sorry, the litigation funding
24 industry, are we -- are we, uh, regulating the retail
25 industry?

1 None of that is never addressed, because this
2 petition impacts all of them in different fashions and
3 the only way to try and make it all fit within a
4 single initiative is to use this generic, uh, lender -
5 - or -- or I'd say consumer debt relief or now we
6 heard a new term today, which is the lifespan of debt.

7 Again, Your Honor, just looking at Helton, it's
8 very straightforward, you know, Mr. Schragger says,
9 well, Helton said that you can have two obviously
10 separate provisions joined together. That's actually
11 exactly the opposite of what the Nevada Supreme Court
12 said.

13 What happened in that case was he attempted to
14 characterize the, uh, primary election and the general
15 election as "separate and distinct elections," but we
16 argued, and the -- the Nevada Supreme Court agreed,
17 they're in fact not. They are an interrelated process,
18 interrelated in the process of how candidates are
19 chosen and elected to office.

20 That's why it was a single subject in Helton and
21 that's what The Court specifically upheld. Now, I
22 think the -- the portrayal of Helton is emphasized in
23 one passage in their brief, uh, and that is where they
24 make this claim that Nevada law does not require each
25 provision of an initiative to be functionally related

1 and germane to each other.

2 Rather, they need only be functionally related
3 and germane to the initiative's overall policy votes
4 and they make that argument, because they have to
5 concede here that these provisions do not relate to
6 each other. And so they tried to cavern them all under
7 this generic reference of consumer debt relief or the
8 lifespan of -- of consumer debt.

9 It's just these generalized terms, but actually,
10 Your Honor, what Helton actually says is the exact
11 opposite. I want to quote what Helton actually says.
12 What The Court explained there was the -- you have to
13 assess if each provision of this petition "is
14 functionally related and germane to each other and the
15 initiative's purpose or subject."

16 It's and the initiative's purpose or subject.
17 These provisions have to relate to each other and they
18 don't and that's the problem, you have two initiatives
19 which Mr. Schrager says have different scopes but yet
20 they have the exact same title. That, of course, is
21 just, I'd -- I'd submit, a classic confession of a
22 single subject violation.

23 And Your Honor, you correctly noted that Section
24 17 and 18 of the first initiative, which is S-01,
25 right -- Section 17 and 18 [Inaudible] garnishment,

1 writs of execution and The Court made the -- asked
2 Schragger and he had to agree that those provi- --
3 those changes aren't limited to this high-lending or -
4 - or -- or, you know, high -- high, uh, cost lending
5 that he, uh, purports to be regulating.

6 That applies to any form of a judgment, any form
7 of -- of enforcement, whether it's rent, whether it's
8 anything and it's not even limited to consumers. That
9 would be true of -- of any of these sort of, uh,
10 [Inaudible] and that, Your Honor, I submit, is a clear
11 confession of a single subject violation.

12 Look at Section 14, which -- which the proponents
13 don't address, it has the exact same problem and
14 Section 14 is in both of these initiatives. Section 14
15 is this opt-out from the Federal, uh, Depository and
16 Petition Deregulation Monetary Control Act of 1980.

17 The proponents don't want to address that,
18 because that has noth- -- that has been -- that has
19 nothing to do or is in no way limited to consumer debt
20 -- consumer high-rate debt, however you want to -- you
21 know, however you want to spin it. That is a
22 competitive provision imposed by federal law 40 years
23 ago.

24 Nevada has not opted out of that federal, uh,
25 regulatory structure in over 40 years and the whole

1 purpose of that statute is to equalize competition
2 between state-registered banks and federally-
3 registered banks and lending institutions. They don't
4 address that, because they are now going to --

5 What this initiative would do -- both of these
6 initiatives would do is that the state of Nevada,
7 after 40 years, opt out of that, which will
8 significantly disadvantage state-registered financial
9 institutions against their competitors in the federal-
10 registered institutions. That, again, Your Honor, has
11 -- is not limited to consumer debt, it's not limited
12 to high, uh, interest rate and it certainly isn't
13 limited to payday loans.

14 That's just a generic provision, like Section 17,
15 like Section 18, in the first initiative, which are a
16 separate subject. The voters would have to be asked do
17 they really want to opt out? Do they really even
18 understand that this initiative, as the proponents
19 told the voters, what the Depository Institutions
20 Deregulation, uh, and Monetary Act of 1980 even does.

21 No. They don't, they don't even mention it. It's
22 buried in this initiative as an opt-out, which would
23 change 40 years of Nevada law and that is simply not
24 appropriate. Both of these initiatives suffer from a
25 multitude of single subject problems and that infects

1 the descriptions of effect as we have previously
2 [Inaudible].

3 I just want to briefly comment, Your Honor, on
4 this issue about, uh -- the last argument about the --
5 the, uh, complete text or the total text requirement.
6 Yeah. M- -- Mr. Schragger says that in Helton, we
7 didn't disclose -- we didn't identify the multitude of
8 statutes that would've been, uh, repealed by virtue
9 of, uh, the initiative in Helton.

10 Well, that's interesting, because the reason for
11 that is Helton is a constitutional amendment, a
12 constitution sur- -- uh -- uh, supersedes any statute
13 and the voters understand that. They know that they're
14 going to change the way in which candidates are
15 elected in this state by way of a constitutional
16 change.

17 That's going to, uh, have a large impact on a
18 whole number of statutes, no one disputes that, but
19 here, [Inaudible], they are proposing -- they are
20 proposing a statutory initiative that is going to have
21 the effect of both repealing certain statutes and
22 modifying certain statutes and they demonstrated this
23 with respect to Section 17 and 18 in the first
24 initiative with S-01.

25 They acknowledged that. And so they showed the --

1 they showed the voters what they're going to change.
2 Now -- but in the other provision, they don't show the
3 voters what they're going to change and one of the
4 points I would just make on that briefly is look at,
5 uh, section -- they're going to change NRS Chapter 97,
6 Your Honor.

7 NRS Chapter 97 deals with retail installment
8 transactions. The legislature in NRS Chapter 97
9 established an exclusivity requirement. That statute
10 specifically says that this statute is exclusive to
11 these transactions and it supersedes any other
12 statute.

13 The proponents here are not proposing to delete
14 and repeal that exclusivity, but yet they never tell
15 the voters that and they never showed them any of that
16 and that's a violation of the constitution's
17 requirement that you show the voters the actual text
18 that you are deleting and they aren't doing that and
19 that's the problem here. And with that, unless The
20 Court has questions, I don't want to take up any more
21 of The Court's time. Thank you very much.

22 THE COURT: That's fine. Thank you. Next.

23 MR. MORRIS: Uh, Your Honor, Matt Morris, again,
24 for the record here on behalf of DailyPay and I'll
25 just, uh, very briefly respond to a few of the points

1 that, uh, Mr. Schragger made. Number one, I think The
2 Court hit on a critical question, which is why haven't
3 these circulators run a referendum on Senate Bill 290?

4 Uh, clearly, Mr. Schragger says there is no
5 problem if they are running multiple petitions that,
6 uh -- um, propose multiple changes and we would
7 encourage them to run a referendum on Senate Bill 290
8 that changes that they are proposing would repeal
9 legislation. It's not just creating a new statute that
10 happens to deal with predatory loans, which can't
11 apply to our client, because our client is expe- --
12 expressly not alone.

13 They are repealing Senate Bill 290's provisions
14 that provide as much. They are redefining that
15 particular product as something that the legislature
16 has said it is not. If they want to run a referendum,
17 they're free to do that. We would submit that they're
18 worried about running a referendum on a bill that
19 passed nearly unanimously in both houses with
20 bipartisan consensus that our Republican governor
21 signed into law and a Democrat majority leader
22 sponsored.

23 There is a lot of risk around running a
24 referendum on a bill that's politically popular, but
25 if you can include that referendum, repealing

1 legislation that you just don't like into an
2 initiative petition that deals with a host of other
3 potentially more popular subjects, then you have a
4 better chance of the change that you're looking for.

5 And so we would submit that they are required to
6 submit a referendum and the constitution doesn't
7 require that a referendum is only a repeal of an
8 entire piece of legislation. The constitution says,
9 under Article 19, Section 1, that a referendum can be
10 on part of legislation. If they want to repeal SB-290
11 that says earned wage access services are not a loan
12 and are not lending, they can run a referendum and
13 repeal that provision and that's what they should be
14 required to do rather than include that in an
15 initiative petition on a host of other subjects.

16 We, uh -- uh, I want to say I agree with Mr.
17 Schrager that the right of voters to change law, to
18 enact new law, to repeal existing law that is
19 sacrosanct, that is important, that is protected, but
20 it's meaningless if the process doesn't abide by these
21 procedural rules for precisely the reasons that Mr.
22 Schrager articulated.

23 There is no committee vetting of this petition as
24 you would have in the legislative process. There is no
25 testimony in support or opposition of a petition when

1 it's presented to a voter. You don't have the
2 safeguards that facilitate the democratic process in
3 the legislative -- in the legislative chamber that you
4 have when you are circulating a petition and because
5 of that, strict compliance with NRS-295 is required.

6 Now, Mr. Schragger, in the entirety of his
7 presentation today, not one time did he mention NRS-
8 295.009 Subsection 2, not once and as we called out in
9 our response, nor does their briefing. The briefing
10 does not explain 009 Subsection 2 and 009 Subsection 2
11 says that a petition satisfies the single subject
12 standard if it sufficiently notifies signatories of
13 the interests likely to be affected.

14 There is nothing in these petitions that notify
15 signatories of the interests in accessing earned wage
16 access service. That's why we've contended that
17 Subsection 2 is so important by its plain language. In
18 addition, Your Honor, uh, we also contend that the, um
19 -- the -- my last point, Mr. Schragger talked about
20 Section 15 of the petition.

21 Section 15 is what calls out Senate Bill 290 and
22 it purports to apply prospectively. So Mr. Schragger
23 tries to make a point that, well, there's -- there's
24 no, um, effect on Senate Bill 290 for years down the
25 road and that's not true. Section 15 of Senate Bill --

1 of the petition applies only to earned wage access
2 licensees exclusively.

3 Now, the problem with Senate Bill -- with Section
4 15 of the petition is it doesn't bother to explain to
5 a voter what Senate Bill 290 says, it doesn't, uh,
6 include the -- the text of the bill, it doesn't
7 include the definition that it refers to and that's
8 the full text problem, but beyond that, Section 15
9 doesn't exempt other third-party providers and by
10 definition under Senate Bill 290, my client is an
11 employer-integrated earned wage access provider.

12 My client has to work with other third parties
13 who do not provide the service, they simply verify
14 that a worker has already earned the wages that
15 they're accessing, but the petitions are so broad
16 under Section 5 they apply to any person -- any person
17 who offers, markets, facilitates a transaction that
18 the petitions redefine as a loan is now subject to
19 these new restrictions.

20 That means that an employer that my client
21 partners with to provide the service, now they're a
22 lender, now they're subject to lending laws.

23 A payroll -- uh, a payroll service provider who
24 simply provides data to show that a worker has worked
25 a -- a shift and has earned the money that they're

1 accessing, now they're lenders all the sudden, because
2 my client, by definition under 290, partners with
3 those third-party entities and Section 15 doesn't
4 exempt those third parties who participate in this
5 financial service.

6 And so they would now be swept under this new
7 expansive regulatory regime. And so The Court has to
8 look at the language -- at the language of the
9 petition, not just the arguments of what the
10 petitioner is saying.

11 If it's overbroad, if it has material effects
12 beyond what the description states, then it can
13 violate the single subject rule and that is the
14 problem here with regard to earned wage access
15 services and more particularly, with regard to
16 employer-integrated earned wage access services. It's
17 the employers and those, uh -- those businesses, and
18 we cite how many in our complaint, there are over 200
19 business who have partnered with my client to provide
20 this service, over 6,000 workers in Nevada have used
21 it and those interests are not referenced in the
22 description of effect, nor are they apparent from the
23 language in the petition itself.

24 And so that's why the petitions violate NRS-
25 295.009. If there are no questions, then I will

1 conclude.

2 THE COURT: Thank you. Next person.

3 MR. REISMAN: Again, Josh Reisman, Your Honor,
4 uh, on behalf of Third and ARC. Your Honor, we're not
5 arguing the petitions cover too much ground, we're
6 arguing that they cover inconsistent ground, lending
7 and non-lending inconsistent ground and we're arguing
8 that they treat that inconsistent ground as one
9 subject and they fail to tell the voters that that's
10 what they're doing.

11 And the next point that he raises, debtors are
12 worried about being pursued by litigation funders.
13 Personal injury plaintiffs have already satisfied
14 their obligations through the [Inaudible] of proceeds.
15 So we're not -- we're not going after their personal,
16 you know, earnings and wages. Bradley next -- next
17 wants to apply what he's calling a -- a "going in a
18 better place" subject test.

19 My gosh, what might that excessively general
20 subject te- -- test look like? Adopting communism,
21 adopting reparations? It's, uh -- that -- that subject
22 is a -- is a -- is a -- includes a -- a vast amount of
23 potential things that could put people in a better
24 place financially. Now, we -- we don't disagree with
25 Bradley that people can redefine litigation funding as

1 loans.

2 Of course, voters have the power to redefine
3 litigation funding as loans, the problem is they don't
4 tell the voters that that's what they're doing. Voters
5 don't know that they're redefining litigation funding
6 as loans. Non-recourse, non-recourse doesn't mean no
7 charges or interest, it means that you can't pursue a
8 person's earnings or wages to satisfy an obligation.

9 That's where litigation funding is non-recourse.
10 The -- the funders can't go after their earnings, they
11 already have received an assigned right to -- to, uh,
12 future, uh, potential proceeds. Now, li- -- litigation
13 funders [Inaudible] also are easy marks, as Bradley
14 says that they are. Their lawyers help them make the
15 decision.

16 The lawyers are involved in every step of the way
17 and sign off on the contract. They're desperate to
18 settle when they come to us. They're desperate to
19 settle their cases for pennies on the dollar, because
20 they can't afford to continue litigating. That's the
21 game the insurance companies play.

22 We give them a lifeline so that they can perform
23 -- they -- they can prolong their litigation and --
24 and they can beat the insurance companies at their own
25 game. Now, you've -- now, Your Honor, you've raised a

1 really interesting point, this -- this question that
2 you asked about judgment debtor protections against
3 collection; okay?

4 The way that they drafted things, the judgment
5 debtor protections against collection don't just serve
6 to combat predatory lending, they serve to combat all
7 predators seeking to collect on a judgment and that
8 wouldn't just include these predatory lenders, that
9 would include the little guy, the people that they're
10 trying to protect, the little guy who has a \$5,000
11 judgment from small claims court for -- for wages that
12 [Inaudible] by the employer or for property damage
13 against some of the injured or -- you know, injured
14 their property, who took something from them.

15 They -- they would be prevented from being able
16 to reach someone's earnings, because they capture or
17 [Inaudible], uh, so -- so highly and -- and being able
18 to access, uh, other assets, because it increased the
19 -- uh, the exception so much. And litigation --
20 litigation funding isn't dependent on future earnings
21 and income.

22 They're talking about loans are better at future
23 earnings than income. Litigation funding isn't
24 dependent on future earnings and income, it's a
25 present contemporaneous assignment of rights in

1 litigation proceeds. It's not covered by [Inaudible]
2 of loans in future earnings or income. And then
3 lastly, Your Honor, Bradley's right, S-03 is
4 singularly focused.

5 It's singularly focused on high-interest lending,
6 not litigation funding. Any further questions, Your
7 Honor?

8 THE COURT: No.

9 MR. REISMAN: Okay. Thank you.

10 MS. GRAVES: Good morning, Your Honor. Sihomara
11 Graves on behalf of ActiveHours. Mr. Schragger started
12 his address to The Court with commenting that there
13 are so many plaintiffs here today and I submit that
14 the reason that there are so many plaintiffs here
15 today is that there are a lot of service providers,
16 uh, that are impacted by the various different
17 subjects within Mr. Schragger's petition.

18 He then stood up here saying, you know, earned
19 wage access services, they say that there's no
20 interest but the fees, but again, there are -- there
21 are no fees. I want to point Your Honor to Section 12
22 of SB-290 that kind of sets forth all of the
23 differences between us and loans. And I'm sorry,
24 that's Section 31 of SB-290, which says that an earned
25 wage access service provider shall not use a user's

1 consumer credit report, as defined in NRS-686 or
2 user's credit score to [Inaudible] user's eligibility,
3 shall not charge a late fee, shall not charge deferral
4 fee, interest or any other penalty or charge for
5 failure to pay outstanding proceeds, fees, voluntary
6 tips, gratuities or other donations.

7 A provider shall not report any information about
8 the user regarding the inability to provide -- for the
9 provider to be -- be repaid outstanding proceeds fees,
10 voluntary tips, gratuities or any other donations for
11 consumer. It shall not compel or attempt to compel
12 payment by a user of outstanding proceeds.

13 So Mr. Schragger then came up here and gave us
14 another potential subject for his initiative to
15 ameliorate collections of loans. Well, SB-290 makes it
16 a point that earned wage access services wouldn't fall
17 under that subject matter.

18 Next, it was discussed that maybe what Mr.
19 Schragger's trying to do is actually redefine and
20 recategorize transactions that are not actual loans
21 into loans, but if that's what's happening, then the
22 petition needs to say so and the description of effect
23 needs to say so, because that's a different subject
24 altogether than what we're doing here, which is
25 supposedly combatting high-interest lending practices

1 as they exist now.

2 The petitioners -- the petitioners want The Court
3 to, uh, ignore that earned wage access services onto
4 [Inaudible] all the other transactions aren't loans
5 and because they defined them as loans say, okay,
6 well, then they're loans for this purpose, but if a
7 petitioner could simply redefine the various subjects
8 within its petition, that there would never be single
9 subject violation.

10 And I'd like to point The Court to our brief
11 where, you know, if you stick with that stated purpose
12 that petitioners say in their omnibus brief, which is
13 the very, very general, uh, consumer debt relief
14 purpose.

15 The Court in California trial lawyers, which is
16 relied upon by the Nevada Supreme Court says that
17 cons- -- that, um, anything like the consumer trial
18 lawyers, the petitioner tried to say that controlling
19 insurance was their subject and The Court said that
20 that was far, far too general, because it would
21 pervade virtually every aspect of life.

22 The same is true here, if the purpose is consumer
23 debt relief, that is going to pervade every aspect of
24 life. That stated purpose would permit the joining
25 [Inaudible] so disparate as to render the

1 constitutional single subject limitation nugatory. So
2 they can't proceed under that subject.

3 Mr. Schragger then goes on to say that well, 36
4 percent shouldn't be an issue if you aren't charging
5 interest at all, but the point is that we're being
6 categorized in an initiative that is meant to address
7 lenders -- predatory lenders when in reality, we
8 aren't charging any interest at all. And finally, Your
9 Honor, SB-290 is exempt in the initiative only as it
10 pertains to one section, Section 9.

11 That is the only section that is exempt that
12 exempts earned wage access services until the sunset
13 of SB-290. The rest of the initiative would apply upon
14 passage. So it's not really true that SB-290 is exempt
15 from the entire initiative. Thank you. Any questions?

16 THE COURT: No. Mr. Schragger, did you have any
17 brief statements you want to make?

18 MR. SCHRAGER: Um, yes, Your Honor, just because
19 you can never get more of an opportunity to make a
20 statement than have it not happen.

21 THE COURT: Well, if you could surprise me.

22 MR. REISMAN: Yes. Well, yeah. Uh, I'm -- I'm
23 going to surprise myself.

24 THE COURT: Yeah.

25 MR. REISMAN: So I'll just sort of generally --

1 the lender -- the lender [Inaudible] is that -- and
2 sort of come through, you can't hold these things up
3 to the light and not have [Inaudible] come through,
4 because I believe I have the right to cast these
5 transactions in -- in a way that exists as cash, no
6 question about it.

7 They don't like it, but they have the right to do
8 it. It is -- it is, uh -- you know, Mr. Bice says,
9 well, you should be -- you should be highlighting
10 what's going on with the DIDMCA Act, uh, when in fact,
11 there's an entire [Inaudible] description of effect
12 not just in the petition that describes that anyone
13 who will read it regarding enforcement penalties,
14 we've already talked about [Inaudible].

15 I understand the, uh -- uh -- uh -- uh -- uh,
16 they're called [Inaudible] response to what's going on
17 here. I understand it, but there is nothing in this
18 petition that is unlawful. It may unpopular and if --
19 and if, you know -- if the -- if the, uh -- if the
20 idea is that I need to, in the description of effect,
21 say that [Inaudible] thousands of people [Inaudible]
22 of earned wage access, I doubt it, but okay.

23 If there's some sense that, you know, even though
24 Mr. Reisman says we -- we operate under 40 percent
25 interest cap right now but you can't touch the

1 interest rate and lower it to 36 percent, do I need to
2 say that in the description of effect, I doubt it, but
3 okay. There's only so much I can do in the description
4 of effect and I can't address everybody's [Inaudible].

5 What I can do and what we have done is broadly
6 describe in a good faith way what this issue seems to
7 do and if we're talking about the interest effect, uh,
8 there -- there is simply no way to go through
9 everybody's interest and say me too, put my interest
10 in there, I'll only take 100 -- 100 words, 20 words,
11 40 words, 50 words for my client, so I want a piece of
12 that real estate too.

13 All we can do is affirmatively conduct ourselves
14 in a good faith manner to describe what we're doing
15 and then beyond that is -- uh, as the administrative
16 board has long recognized, the petition speaks for
17 itself, it is available [Inaudible]. It is [Inaudible]
18 where people can, as I said, shout from the rooftops
19 what's right or wrong about the [Inaudible] pages.
20 With that, Your Honor --

21 THE COURT: Okay. Well, I'm citing that Herbst
22 Gaming, Inc., um, there's two types of challenges to
23 initiative that are appropriate for pre-election
24 consideration. That was based on the argument that the
25 initiative does not meet the procedural requirements

1 for placing an initiative on the ballot.

2 And the other one is that the subject matter is
3 not appropriate for direct legislation under the
4 constitution or statutory limits. On the initiative
5 power, I don't think number two applies in this case.
6 Um, number one, the, um, procedural requirements here,
7 I think we've got, uh -- we're arguing the single
8 subject, uh, it fails to --

9 Uh, you know, plaintiffs are arguing that it
10 violates the sin- -- single subject rule and the other
11 argument is the, uh, description of effect, it doesn't
12 notify of the effect. Um, another one is that it
13 doesn't include the full text, which they're asserting
14 it is required. The other one is is that it, um -- um,
15 it has a fi- -- physical impact, uh, that, uh, the, uh
16 -- the money required for that isn't set forth in the
17 statute.

18 I, uh -- and -- and each of you are going to, uh
19 -- on the plaintiff's side, uh, you're going to need
20 to write a decision for me and on the defendant's side
21 also, I think, uh, S-01-2024, uh -- I think the, uh --
22 that Section 17 and 18, uh, talking about, uh -- uh,
23 raising the, uh -- the amounts that can be collected,
24 I think that because it doesn't just limit itself to
25 the -- the effect of this statute, I think that is a

1 different subject.

2 So I am going to, uh, enjoin, uh, the secretary
3 of state from placing S-01-2024. S-03-2024, I think
4 the, uh -- uh, it's -- you know, this is one of the --
5 I did that Herbst one on the smoking. I think -- I
6 think it was Herbst was the name of the case. I've
7 done so many of these I can't remember the names
8 [Inaudible].

9 Um, that -- that was a really broad statute. I
10 know the, uh, people objected to that one, raised 16
11 separate issues. I spent months addressing each and
12 every one of the issues and then the supreme court
13 basically upheld 1 of the decisions I made, ignored
14 the other 15 and then yelled at me, because I took so
15 long to make the decision.

16 But, uh, thi- -- this is close to the broadest
17 initiative that I've, uh, had to deal with, but I
18 think -- I don't think it violates the single subject
19 rule.

20 Uh, this is 03- -- S-03-2024. I think it all
21 talks about con- -- uh, you know, people, uh -- uh,
22 receiving money in -- either in some form or some
23 manner and the interest rate that can be charged on
24 it, uh, I think, uh -- uh -- uh, I think a lot of the
25 arguments that are being made by the plaintiffs in

1 this case are substantive arguments, uh, that can be
2 raised, uh, after.

3 There's a propes- -- there's a, um -- a
4 presumption in favor of people being able to vote on
5 these things. That's the idea underlying the, uh --
6 the whole initiative process and the -- the supreme
7 court, uh, obviously favors initiatives and
8 referendums, uh, and, uh, they place some high burdens
9 on a court precluding them from going on the ballot,
10 but I think --

11 I think this, uh -- deleting the -- the -- the,
12 uh -- what is it, 17 and 18 Sections, which is
13 contained in S-01-2024, I think the rest of it, uh --
14 uh -- uh, it -- it all is encompassed within the
15 single subject. Um, the failure to notify the
16 description of effect, uh, I think -- and I can't
17 remember what case --

18 I just read this -- I had another initiative
19 where I was actually surprised to find that people
20 listen to what I say every now and then and that's the
21 one on the, uh, identification that you need, um --
22 uh, to vote either in person or -- and I had the --
23 the same case in front of me two years ago and I kept
24 it off of the ballot, because it did, uh -- it
25 required some money to be spent and required the

1 secretary of state to do things and they -- they
2 wouldn't -- it would've, uh, involved funds.

3 And then I, uh, adjusted the description of
4 effect. And so they actually brought it back, deleted
5 what I said would cause money to be spent and they
6 used my description of effect that I made up. So I --
7 it's going forward this year, I assume, unless the
8 supreme court reverses me, but -- so, uh, single
9 subject rule isn't violated.

10 Uh, this description of effect is probably as --
11 as good a one as you can -- you can give given the, uh
12 -- the, uh, broad scope of this initiative, uh, and
13 the -- the -- the supreme court has said that this is
14 just something people look at to decide if they're
15 going to sign a petition for it to be put on the
16 ballot and, uh, if it is put on the ballot, then you
17 have arguments for a lot more, uh -- uh -- uh, what's
18 actually in the bill is better described, uh, when
19 they actually put it on the ballot.

20 So in this case, uh, I think the description of
21 effect is adequate. Um, I'm a little troubled by the
22 idea that there -- there -- there is existing
23 legislation that's being repealed and amended and, uh,
24 I -- I don't know what the effect of that is, I have
25 no idea. Uh, I do think this can -- if you look at it

1 overall, it can be described as an initiative.

2 There may be some referendum included in it. Uh,
3 I don't think you have to include the full text. Uh,
4 the physical effect, I'm almost positive that if the
5 legislative counsel bureau had to put a physical
6 effect on this, it would be zero. So I don't think
7 there's any, uh, physical effect. I think -- I think
8 there's physical effect, but I don't think --

9 My idea of what physical effect is and having
10 been part of the executive branch for years and having
11 to do things -- new things that the legislature
12 requires me to do without any more funds, uh -- uh,
13 they're two different things. What I -- what I think,
14 uh, has physical effect and what the legislature
15 thinks has physical effect is two different things,
16 but I think, uh -- uh, their -- their decision on it
17 applies.

18 So I don't think there's any physical effect. I
19 don't think that they'll find that there's a physical
20 effect that can't be -- that can't be accounted for by
21 the people that are in place even though it makes the
22 people that are in place have to work a lot more and
23 once that started happening, then people have to be
24 hired. Uh, so I think it has a physical effect, but
25 based on the law, as I've seen it, uh, I'm not going

1 to disqualify it for that.

2 Uh, so, uh, Mr. Schragger, I want you to write an
3 opinion allowing S-01- -- um, S-03-2024 on the ballot
4 and, uh, the plaintiffs can decide which of you are
5 going to write the decision on, uh, rejecting S-01-
6 2024. So that'll be the order of The Court. We're in
7 recess.

8 MR. SCHRAGER: Can I ask just a procedural
9 question, Your Honor?

10 THE COURT: Okay.

11 MR. SCHRAGER: This is just, uh -- uh, I -- I
12 assume you would like us to exchange the orders and --
13 and -- and --

14 THE COURT: Yeah. That's [Inaudible].

15 MR. SCHRAGER: -- in the usual collegial fashion?

16 THE COURT: I'm sorry, I should've said that. Um,
17 how long will it take you to prepare your order, Mr.
18 Schragger?

19 MR. SCHRAGER: Seven days.

20 THE COURT: Okay. And then how long for the
21 plaintiffs?

22 MR. REISMAN: [Inaudible]

23 THE COURT: Okay. So a week from now, exchange
24 them. If there's any, uh, objections, see if you can't
25 work them out. Submit something to me within 14 days

1 and that's --

2 MR. SCHRAGER: Sure. And we -- and we can do that
3 electronically like we have -- we sort of have a --

4 THE COURT: Um, do you all have my email address?

5 MR. REISMAN: We can certainly get it from the
6 [Inaudible].

7 THE COURT: Okay. Um, submit a written one to
8 them, email me or propose the orders; okay?

9 MR. REISMAN: Very good.

10 THE COURT: Okay. We're in recess.

11 MR. REISMAN: [Inaudible]

12 MS. GRAVES: Thank you, Your Honor.

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I, Chris Naaden, a transcriber, hereby declare under penalty of perjury that to the best of my ability the above 117 pages contain a full, true and correct transcription of the tape-recording that I received regarding the event listed on the caption on page 1.

I further declare that I have no interest in the event of the action.

April 1, 2024



Chris Naaden

(6622796, Nevadans for Financial Choice v. Kate Feldman)

&	120 50:17	1994 55:23	24oc000211b
& 3:8	125 46:24	1st 85:13,17 88:18	2:7 3:9 5:3
0	13 8:25	2	24oc000231b
0 22:11	14 10:8 93:12 93:14,14 116:25	2 17:8 18:15 21:19 36:21 44:11 99:8,10 99:10,17	2:8
00018-1b 1:14	14th 18:24	2 17:8 18:15 21:19 36:21 44:11 99:8,10 99:10,17	24oc000291b
009 99:10,10	15 25:7,17 27:4 29:22 54:19 89:13 99:20,21 99:25 100:4,8 101:3 112:14	2's 22:11	2:8
01 73:11 75:21 75:22 87:24 92:24 95:24 116:3,5	150,000 27:10	2/3 32:13,17	25 27:11
01-2024 5:12 9:23 111:21 112:3 113:13	16 112:10	20 5:6 28:19 57:2 110:10	29 16:18 33:20 44:8
03 75:21,25 87:24,25 105:3 112:20	160,000 31:15	200 14:2,7,9,16 14:20 47:10 72:6 101:18	290 17:20 18:2 18:20,24 19:7 20:7,15,25 21:17 23:8,13 24:6,6,11,13,24 25:16,24 26:1 26:16,21 27:2 27:4 28:6 29:9 30:4 31:11 32:11,12 33:9 65:18 81:4 82:17 83:13,23 86:3,6 97:3,7 98:10 99:21,24 100:5,10 101:2 105:22,24 106:15 108:9 108:13,14
03-2024 5:12 6:5 112:3,20 116:3	17 9:24 61:6 92:24,25 94:14 95:23 111:22 113:12	2005 56:12	290's 83:12 97:13
090 15:18	176 75:17	2022 56:24	291b 5:9
1	18 9:24 33:20 80:8 92:24,25 94:15 95:23 111:22 113:12	2023 17:19 30:14,19	295 18:11 23:24 99:5
1 18:14,23 20:16 30:14 98:9 112:13 118:8,13	181 46:24	2024 1:12 116:6 118:13	295.009 7:18 11:14 17:8 21:18 22:10
10 8:25 51:25	181b 3:20 5:19	2026 85:22	
100 72:5,8 110:10,10	1821 5:7	2030s 83:22	
100,000 79:19	19 7:2 18:9 77:22 82:21 98:9	208 42:17	
105 15:18	19's 80:10	21 6:6 33:20	
117 118:5	19.03 81:12	21.01 15:18	
12 8:25 105:21	1980 10:11 14:23 93:16 94:20	211b 3:14	
12,000 21:24		22 1:12	
		220 36:21	
		23 33:21,23 44:5	
		231b 3:2 5:8	
		24 1:14	
		24oc000181b	
		2:7	

[295.009 - acknowledge]

55:21 99:8 295.009's 17:4 295.009. 6:22 101:25 295.0091b. 43:24	47th 51:12	9	24:14,22 25:9 25:10,15,20 26:7,18,19 27:7,10,16 29:13 31:11 32:19 45:16,17 45:21 47:23 48:1 53:1 59:7 68:11 76:20,24 98:11 99:16 100:1,11 101:14,16 104:18 105:19 105:25 106:16 107:3 108:12 109:22 accessing 19:13 99:15 100:15 101:1 account 75:3 accountability 46:23 accountable 42:16 accounted 18:8 115:20 accurate 24:8 73:21 accurately 77:8 accused 81:20 achieve 35:14 42:4 acknowledge 12:21 23:24
3	5	9 8:25 80:8 108:10 90 82:25 97 96:5,7,8	
3 7:2 30:19 54:18 79:19 82:21 89:2 3,000 81:8 300 53:9 69:2 309 34:22 31 23:13 105:24 31475 118:16 33 20:16 36 53:18 66:1,4 73:25 108:3 110:1 36,000 21:22 369 75:5 38.7 51:17	5 23:17 100:16 5,000 69:1 75:3 89:3 104:10 50 53:9 110:11 500 53:9 512 34:22 51c 20:19 545 66:14	a abide 98:20 abiding 35:20 ability 58:6 118:5 able 3:22 9:17 10:25 14:15 59:6 62:2 63:16 72:11,13 104:15,17 113:4 above 36:13 37:16 75:6 118:5 absentee 40:11 absolute 51:8 71:6 absolutely 58:19 68:18 75:9 absurd 81:11 abuse 7:21,21 accept 6:13 82:15 access 17:20 19:1,3,9,18 20:9,9,10,18,20 21:2,8,23,25 22:15 23:7,11 23:14 24:5,9	
4	6		
4 27:1 54:19 40 10:11,16 37:24 43:15 53:8 93:22,25 94:7,23 109:24 110:11 400 69:1 75:4 429 42:17 46 81:22,24	6 77:22 80:8 83:14,14,15,20 83:21 6,000 101:20 604 36:21 37:23 38:15 39:1,5,8 43:15 604a 8:20 604d 35:12 6622796 118:20 686 106:1		
	7		
	7 8:24		
	8		
	8 9:3,8 10:24 69:2 80 53:9 800 69:2 80s 28:15 850 75:4		

[acknowledged - amended]

<p>acknowledged 95:25</p> <p>acknowledge... 38:9</p> <p>act 10:11 14:23 20:6,23 35:13 66:15,24 71:25 84:9 93:16 94:20 109:10</p> <p>acting 50:6,8,9</p> <p>action 66:15 118:11</p> <p>active 2:13 5:9 16:18 44:7,10</p> <p>activehours 47:2 105:11</p> <p>actively 42:19</p> <p>activity 69:13</p> <p>actual 17:14 22:23 81:20,21 96:17 106:20</p> <p>actually 6:1 7:19 8:2 11:13 14:11 16:2 17:18 37:25 38:4 43:16 55:21 74:20 87:22 90:6 91:10 92:9,10 92:11 106:19 113:19 114:4 114:18,19</p> <p>add 8:23 58:15 90:9</p>	<p>adding 35:12 84:18 86:19</p> <p>addition 21:18 22:16 39:10,12 99:18</p> <p>additional 67:7 86:17</p> <p>additionally 75:2 77:18</p> <p>address 11:19 15:14 40:3 45:10 47:15 49:19 52:2 83:17 93:13,17 94:4 105:12 108:6 110:4 117:4</p> <p>addressed 91:1</p> <p>addresses 35:23 73:2</p> <p>addressing 41:17 42:22,23 43:1 44:22 46:1 112:11</p> <p>adds 37:25 73:15</p> <p>adequate 114:21</p> <p>adequately 17:14</p> <p>adjusted 114:3</p> <p>administrative 110:15</p> <p>admirable 52:16</p>	<p>admit 13:8 24:10</p> <p>admits 85:6</p> <p>adopted 20:15 20:25 26:25</p> <p>adopting 102:20,21</p> <p>advance 80:12</p> <p>advantage 36:14 38:7</p> <p>adventurous 80:24</p> <p>adverse 22:4</p> <p>adversely 22:8</p> <p>affect 58:21</p> <p>affected 17:10 18:18 22:9 99:13</p> <p>affects 81:2</p> <p>affirmatively 110:13</p> <p>afford 51:23 52:1 103:20</p> <p>afternoon 2:3 5:1</p> <p>agency 78:21 78:22 79:1</p> <p>ago 28:19 57:11 61:12 93:23 113:23</p> <p>agree 7:15 14:8 52:18 90:2 93:2 98:16</p> <p>agreed 12:22 14:14 78:20</p>	<p>91:16</p> <p>agrees 24:1</p> <p>ahead 5:22 32:8 34:1 44:9 71:9 73:19</p> <p>airplane 86:4</p> <p>alabama's 66:21</p> <p>alert 22:3</p> <p>aligned 71:19</p> <p>alike 9:11</p> <p>alleviate 54:16 55:11</p> <p>alliance 3:4 34:4,6</p> <p>allow 6:13 19:3 24:2</p> <p>allowing 21:2 116:3</p> <p>allows 19:12,18 20:20 23:24</p> <p>alter 12:4</p> <p>altogether 106:24</p> <p>ameliorate 106:15</p> <p>amend 18:5 23:24 24:8 25:6,10,14 26:14 39:8 84:9 88:7</p> <p>amended 35:12 50:14 84:7,7 114:23</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[amending - assess]

<p>amending 26:11 38:25 39:5 42:9 85:4 amendment 31:2 95:11 amendments 39:6,9 amount 37:11 41:10 69:11 70:25 74:1 77:2 102:22 amounts 75:8 111:23 analogize 13:4 analogy 27:22 analyses 64:1 analysis 28:1 59:25 60:2 62:13 63:10,21 67:19 83:10 87:1 analyze 44:14 analyzing 34:25 animals 85:23 annoying 79:6 annual 79:25 annually 37:25 53:19 73:25 annuity 9:7 annulled 64:9 answer 60:19 87:2,13 answered 90:6</p>	<p>anticipation 9:5 45:5,13 anybody 4:5 53:17 89:17 anymore 61:19 69:6 anyway 32:8 68:24 apologize 5:2 apparent 101:22 appeal 18:5 appealing 26:12 appearance 3:17 appearances 6:10 append 64:15 81:2,4,5 83:22 applies 23:4 93:6 100:1 111:5 115:17 apply 19:21 34:11 36:1 43:11 69:17,21 69:24 70:10,15 71:8 83:21 97:11 99:22 100:16 102:17 108:13 applying 43:7 apportion 31:2 31:3</p>	<p>appreciative 63:15 approach 33:25 appropriate 13:23 94:24 110:23 111:3 appropriation 80:4,10 appropriations 79:3 approve 25:4 38:13 89:6,6 apr 39:2,17 42:11 43:15,17 april 118:13 aptly 26:8 ar 31:9 71:16 arc 3:5 34:7 102:4 arc's 34:9 architect 11:23 argue 22:12 31:6,9 33:22 39:22 71:5 87:15 argued 7:16 12:9 26:9 56:2 82:12 91:16 arguing 12:3 102:5,6,7 111:7,9 argument 11:9 15:13 16:4,8,9 18:10 19:22,24</p>	<p>22:19 59:3 73:8 80:23 92:4 95:4 110:24 111:11 arguments 17:1 33:16 35:10 57:8 60:12 63:23 101:9 112:25 113:1 114:17 article 7:2 18:9 77:22 80:7,8 80:10 82:21 98:9 articulated 16:24 90:10 98:22 articulates 64:23 asked 22:24 26:14,15 93:1 94:16 104:2 asking 24:11 aspect 47:1 107:21,23 aspects 73:16 74:9 90:19 assemblies 58:17 assembly 58:14 90:19 asserting 111:13 assess 92:13</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[assessed - bill]

<p>assessed 37:24 asset 68:12 73:15 75:1 86:18 assets 53:15,21 62:7 63:12,16 67:8 69:11 76:2 104:18 assigned 41:9 103:11 assignment 41:14 104:25 assigns 37:10 associated 18:7 27:6,24 29:12 37:17 88:24 assume 114:7 116:12 attached 26:21 26:25 27:2,22 29:23 30:1,2,3 65:21 attaches 30:5 attempt 72:20 106:11 attempted 91:13 attempting 74:8 attempts 8:15 attention 90:18 attorney 4:14 38:10 51:23 79:12</p>	<p>attorney's 51:24 attorneys 38:12 attracted 48:21 august 85:13 authorize 27:7 authorized 17:20 18:25 20:7 25:9 auto 41:4 automatically 75:2 available 59:14 110:17 avaricious 53:14 avoided 75:14 awful 57:23</p>	<p>61:13 88:15 111:1 113:9,24 114:16,16,19 116:3 ballots 40:12 40:12 bank 9:11 66:18 75:3 banks 66:20 74:24 90:21 94:2,3 barely 65:1 based 28:5,12 53:20 110:24 115:25 basic 40:18 59:25 60:1 72:21 basically 85:4 112:13 basis 37:8 bat 57:20 63:20 battery 28:16 28:21 bauer 3:21 6:17 bear 6:1 beat 103:24 beg 76:1 behalf 2:13 3:10,13,16,19 4:14 16:22 34:3 44:7 96:24 102:4 105:11</p>	<p>believe 15:13 23:20 53:16 88:1 109:4 bench 83:2 benefit 58:15 benefits 15:4,4 best 67:11 72:10 118:4 better 9:17 11:1 53:23 68:9 69:13 71:20 80:5,6 98:4 102:18,23 104:22 114:18 beyond 77:12 84:20 100:8 101:12 110:15 bice 3:16,18,19 4:23 5:20,21 5:23 16:16,24 17:24 22:12,17 26:8 49:19 50:1 54:20 57:5 60:4 64:15 68:13 74:19 89:18,20 89:20,23 109:8 big 16:1 55:13 55:14 bigger 32:6 bill 17:20 18:2 18:20,24 19:7 20:7,15,25 21:17 23:8,13 24:6,11,13,24</p>
	b		
	<p>back 28:15,17 32:10 36:12,13 37:7 52:15,21 53:12,20,25 59:18 60:19 64:7 65:1 67:18,25 68:10 69:14 88:8 114:4 bad 87:9 bait 6:20 balance 74:1 80:7 ballot 44:3 49:18 50:6 54:21 58:25</p>		

[bill - case]

<p>25:11,16,23,24 25:25 26:16,21 27:2,4 30:4 31:11 32:11,12 32:16 33:1,3,8 33:9 81:24 83:14 97:3,7 97:13,18,24 99:21,24,25 100:3,5,6,10 114:18 bipartisan 97:20 bit 4:2 51:9,14 55:12 73:7 bleeding 54:11 block 55:8 board 42:15 110:16 boogeyman 8:18 90:12,17 book 55:13,14 booming 55:10 borrow 66:20 borrower's 36:15 borrowers 36:11 bother 100:4 bottom 49:6 bounds 51:4 box 2:19 boy 80:5,5,18 braces 55:3</p>	<p>bradley 4:9 48:17 102:16 102:25 103:13 bradley's 105:3 branch 115:10 bravo 4:10 break 89:12,13 89:14 brief 13:9 49:4 89:24 91:23 107:10,12 108:17 briefing 7:1 18:23 19:2 20:16 25:2 27:1 33:5 48:8 99:9,9 briefly 7:5 13:24 15:12 95:3 96:4,25 briefs 4:19 brings 18:11 broad 17:15 18:20 40:8,11 46:12 47:1,4 57:15 61:2 100:15 112:9 114:12 broadest 112:16 broadly 110:5 broke 68:11 brought 68:3 114:4</p>	<p>bullet 49:11 bunch 81:5 burdens 49:13 113:8 bureau 32:2 115:5 bureau's 27:25 29:25 buried 94:22 bus 2:20 55:10 55:10 busier 78:2 business 37:23 49:6 65:19 66:7 101:19 businesses 90:20 101:17</p> <hr/> <p style="text-align: center;">c</p> <hr/> <p>c 2:1 36:21 37:23 38:15 39:1,5,8 43:15 calendars 85:12 california 107:15 call 25:8 27:4 28:17 70:16 called 8:18 23:2 32:1 66:18 99:8 109:16 calling 102:17 calls 99:21 campaign 71:20,22</p>	<p>candidates 12:18 13:2 14:13,18 91:18 95:14 cap 36:1 43:7,7 43:11 63:11 65:8,10 66:4,5 66:22 67:2 73:23,24 74:11 74:14,16,23 79:25 109:25 capacity 50:7 capital 3:3 5:8 33:22 34:3 capping 62:6 67:25 caps 40:2,15 69:7 caption 118:7 capture 104:16 car 69:21 70:9 70:24 card 34:15,25 41:4 careful 69:12 carlson 2:11,12 carried 36:11 carries 66:4 carry 81:9 carson 54:18 55:4 case 1:14 2:7 3:9,20 5:2,19 7:17,22 11:16 11:19 13:1</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[case - civil]

<p>14:12 16:17 25:1 34:13 37:14 39:25 44:8 46:24 51:20 56:15,18 56:18 57:4,6 59:19 61:13,13 65:1 80:25 81:16 83:1,4 84:5 91:13 111:5 112:6 113:1,17,23 114:20 cases 2:7 4:12 4:15,20 7:8 38:1 48:18,19 54:21 55:22 57:3 90:3 103:19 cash 109:5 cached 55:9 cast 109:4 catch 76:13 catchall 9:9 categorically 45:22,23 categorize 46:19 categorized 108:6 category 46:12 51:20 cause 6:12 36:22 54:16 78:14 87:16</p>	<p>114:5 cavern 92:6 central 11:9 century 56:8 certain 42:18 60:4,25 61:7 62:13 95:21,22 certainly 62:6,9 63:17 94:12 117:5 chair 4:25 challenge 17:12 17:17,23 21:18 22:16 23:22 24:4 26:23 32:11 35:6 challenger's 12:1 challengers 72:11 challenges 44:11 59:13 110:22 challenging 17:3 chamber 99:3 chance 68:9 98:4 change 7:4 14:15 16:3 38:23 66:12 71:4 88:8 94:23 95:14,16 96:1,3,5 98:4 98:17</p>	<p>changed 55:1 changes 6:6,9 15:17,19,24,25 16:7 38:18,21 47:11 55:5 60:5 62:21 64:4,16 86:22 86:24 93:3 97:6,8 changing 13:1 14:12,12,19 chapter 6:6 8:20 35:12,14 36:22,24 38:14 39:1 43:15 84:7 96:5,7,8 chapters 64:5 characterize 8:18 13:10 57:12 91:14 charge 24:16 24:16 45:19,19 45:24 48:3 63:21 65:22,25 106:3,3,4 charged 35:25 43:4 73:4 112:23 charges 37:24 43:16 103:7 charging 23:8,9 108:4,8 chartered 10:13,14,18</p>	<p>chase 49:10 check 71:1 checks 55:9 child 13:18 choice 1:11 3:21 5:4,19 6:17 33:21 60:21,23 63:7 118:20 chosen 12:20 13:3 91:19 chris 118:3,17 christina 3:21 6:17 circulating 99:4 circulator 22:1 circulator's 30:11 circulators 97:3 circumstances 10:5 36:15 67:17 cite 25:2,13 30:13,17 101:18 citing 110:21 citizenry 7:12 city 42:16 54:18 55:4,7 civil 22:6 51:16 51:18,19,20 74:16</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[claim - computer]

<p>claim 11:7 13:9 37:12 41:11,15 84:1,3 91:24 claims 51:16,17 51:18 54:13 77:13 104:11 clarify 79:14 class 54:2 classic 92:21 clause 76:3 clear 18:11 25:3,17 38:8 49:1 75:15 86:25 87:12 93:10 clearer 24:23 clearly 42:3 43:20 49:15 50:1 68:8 73:1 86:9 97:4 clerk 2:5 3:24 4:4 client 17:21 19:14,17 20:8 21:6,13,13,20 25:19 27:12 29:19 49:23 51:7 97:11,11 100:10,12,20 101:2,19 110:11 clients 6:16 7:11 9:19 36:16 50:4,18 53:16 58:7,20</p>	<p>75:10 87:11 clocking 51:21 close 86:22 112:16 closely 59:23 cmr 2:12 coalition 34:7 codified 56:13 collateral 21:4 colle 69:22 colleague 2:12 16:24 colleagues 16:14 75:10 collect 69:23 70:9 104:7 collected 111:23 collection 40:3 40:16 41:22 51:17 53:13,13 62:8 63:12 67:9 69:13 104:3,5 collections 51:21 54:6 67:24 70:7,23 106:15 collectively 35:3 collegial 116:15 combat 39:7 104:6,6 combatting 35:15 39:3,21</p>	<p>40:2 42:9 44:21 45:25 106:25 come 29:4 46:6 46:15,21 48:7 54:22,23 72:6 86:6 88:10 103:18 109:2,3 comes 52:1,21 58:25 coming 46:11 46:25 comma 75:23 comment 95:3 commenting 105:12 commerce 56:19 commercial 71:7,21 commission 31:5 77:20 78:20 commitment 50:4 51:8 committee 88:9 98:23 common 9:12 51:16 56:23 communism 102:20 companies 34:8 36:18 37:19 38:6 103:21,24</p>	<p>company 34:6 compared 69:5 compel 106:11 106:11 competition 35:20 94:1 competitive 10:13 93:22 competitors 94:9 complain 14:2 complaining 14:3 complaint 21:22 101:18 complaints 5:17 complete 60:9 95:5 completely 10:19 42:13 85:23 complex 20:3 compliance 99:5 comply 15:11 component 67:7 75:1 86:17,20 components 61:21,25 63:11 64:1 65:3 67:13 71:24 computer 2:3</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[con - copies]

<p>con 112:21 concealing 20:3 concede 14:19 92:5 concept 12:4 concepts 13:15 concern 10:3 36:6,9 concerned 12:7 concerning 15:1 concerns 6:7 10:3 12:14 16:23 87:4,9 conclude 102:1 concludes 33:16 condition 46:18 46:19 conditions 67:23 conduct 110:13 confession 92:21 93:11 confines 76:17 conflict 83:9 84:12 conforming 36:23 confuse 76:10 confused 4:24 confuses 41:23 confusion 35:4 71:13 87:16</p>	<p>congress 10:12 connected 17:7 18:13 connection 41:20 cons 107:17 consensus 97:20 consequences 42:19,20 consequently 55:16 consider 10:7 consideration 30:15 38:17 110:24 considered 20:22 65:16 considers 44:24 44:25 45:8,8 45:10 consistent 9:13 consisting 41:1 constituents 51:3 constitute 11:3 constitution 7:3 16:1 18:9 24:25 26:11 77:22 88:23 95:12 98:6,8 111:4 constitution's 96:16</p>	<p>constitutional 30:9,13,18 31:2 80:12 87:11 95:11,15 108:1 construed 35:14 36:22 consumer 3:5 9:5 13:11,19 19:7 34:4,5,7 36:1,16,17,22 38:13 39:15,17 39:23 40:7,14 40:19,22,24,25 41:6,15,17,19 41:21,22 43:6 43:7,19 46:7,9 46:15,17,22 47:3,17 48:4 51:12,12 53:8 62:7 65:11 67:11,14,15 69:18 70:15,24 73:22 74:2 90:22 91:5 92:7,8 93:19 93:20 94:11 106:1,11 107:13,17,22 consumers 35:25 43:4 73:4 93:8 consumption 41:3</p>	<p>contain 38:9 81:12 118:5 contained 113:13 contains 8:7 contemporan... 41:13 104:25 contend 99:18 contended 99:16 contends 47:2 content 72:21 context 75:13 82:7 contingent 37:10 41:9 continue 103:20 continues 8:13 contract 38:8 103:17 contracts 9:8 contrary 12:2 contravention 58:16 contribute 40:24 41:15 control 10:11 40:17 93:16 controlling 107:18 convening 50:13 79:2 copies 86:3</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[cops - dailypay]

<p>cops 78:2 copy 26:21 corners 82:5,8 corporation 5:10 correct 4:20 5:13,14 73:11 118:6 correctly 5:11 92:23 cost 27:10 31:7 31:10,14,24 35:16 36:13 37:15,22 50:21 80:2 93:4 could've 61:8 coun 61:6 council 42:16 counsel 10:25 11:23 12:1 16:22 27:25 29:24 32:2 49:22 55:25 115:5 counsels 15:14 couple 8:8 9:21 62:16 course 84:14 92:20 103:2 court 2:2,6,15 2:18,21,24 3:1 3:6,11,15,22 4:1,5,8,16,24 5:15,22,25 6:13,18 7:6,25</p>	<p>8:1,5 11:15,24 11:25 12:3,6 12:20,23 13:22 15:15 16:13,15 16:17,25 17:1 23:25 27:5 28:12 29:10,14 29:17,21,23 30:7,21,23 31:7,16,23 32:15,22 33:14 33:17,19,24 34:1,18,23,25 35:6 40:9 44:4 44:9 46:22 48:12,14,16 52:8 55:23,25 56:2,6,10,16 57:1 58:13,23 59:21,25 60:12 61:1,11 62:14 62:19 63:4 67:19 69:15,17 69:20 70:3,6 70:14,20 71:8 71:11,24 72:2 73:10,13,19 75:19 76:4,7 76:10,14 77:18 78:3 80:25 81:18 82:2 83:19 85:8,10 86:21 87:13,14 87:16,17,18,22 87:24 88:3,25</p>	<p>89:2,8,12,15,19 89:22 90:7 91:11,16,21 92:12 93:1 96:20,22 97:2 101:7 102:2 104:11 105:8 105:12 107:2 107:10,15,16 107:19 108:16 108:21,24 110:21 112:12 113:7,9 114:8 114:13 116:6 116:10,14,16 116:20,23 117:4,7,10 court's 7:11 78:7 96:21 courtroom 12:1 81:17 courts 28:23,23 51:21 72:12 cousins 85:24 cover 15:10 48:9 79:19 102:5,6 covered 74:13 105:1 covers 48:24 49:2,2 cram 13:21 create 36:19 41:6,14 48:4 58:7 79:1</p>	<p>created 36:7 78:21 creating 37:4 97:9 credit 9:11 20:11 21:4,10 21:17 23:12 41:4 106:1,2 criminal 28:13 32:4 78:1 critical 97:2 criticisms 87:6 crowd 48:21 crowell 2:12 44:7 culmination 56:25 cumbersome 16:6 64:18 curr 38:14 current 15:3 21:16 69:4 73:6,21 currently 21:21 21:24 38:14 42:10 43:6 65:14 73:22 cut 79:4 cycle 30:10,16</p>
d			
<p>d 2:1 3:13 dailypay 3:10 3:14 5:7 16:22 17:22 18:11 19:8,10,14</p>			

[daily pay - described]

<p>21:25 27:12 45:16 96:24 daily pay's 21:23 damage 104:12 damages 22:5 37:20 dare 86:5 data 19:11,12 100:24 day 50:17 days 116:19,25 de 10:10 deal 9:25 84:11 97:10 112:17 dealing 9:22 39:10 47:24 deals 25:14 60:14 96:7 98:2 debt 6:3 13:11 37:4 39:24 40:7,14,19,22 40:25,25 41:4 41:6,7,8,14,15 41:17,21,22 46:7,9,15,22 47:3 48:4 51:12,16,17 52:1,3,17 53:6 53:13,13 54:15 63:14,14,16 67:14,15 68:11 75:7 91:5,6 92:7,8 93:19</p>	<p>93:20 94:11 107:13,23 debtor 52:9 104:2,5 debtors 51:23 54:8 102:11 debts 13:17,19 13:20 41:1 decades 56:22 deceptive 17:13 22:21 71:17 decide 33:6 50:25 88:15,17 114:14 116:4 decision 8:1 12:22 13:4 14:11 27:7 103:15 111:20 112:15 115:16 116:5 decisions 20:1 35:5 41:24 71:14 112:13 declare 44:2 118:3,10 deem 72:5 deemed 36:24 default 51:22 defend 51:24 defendant 48:18 defendant's 35:10 111:20 defendants 4:11 34:14</p>	<p>39:22 defended 7:17 defer 16:13 deference 7:11 deferral 106:3 deferred 45:2,4 45:12 47:16,19 74:2 deficient 6:25 44:13 define 44:23,25 58:2,3 61:20 defined 45:1 52:7 65:9 106:1 107:5 defines 36:9 40:25 definitely 57:12 definition 19:14 20:18 23:5 27:18 45:14 47:20 90:16 100:7,10 101:2 definitions 18:2 18:4,4 45:7 definitive 62:18 delaware 5:10 delete 6:6 96:13 deleted 68:24 114:4 deleting 68:15 69:6 96:18 113:11</p>	<p>democracy 59:16 85:25 democrat 97:21 democratic 99:2 demonstrate 34:15 78:11 79:8 demonstrated 80:22 95:22 demonstrates 16:9 dependent 36:2 43:9 60:20,24 74:6 104:20,24 depending 74:4 deposit 45:2,4 45:12 47:16,20 74:3 depository 10:10 93:15 94:19 deregulation 10:10 93:16 94:20 derived 34:12 describe 14:6,8 14:16,20 19:20 72:21 75:12 110:6,14 described 45:17 60:4 66:9 80:1 114:18 115:1</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[describes - doing]

<p>describes 74:17 109:12</p> <p>description 13:25 19:22 22:17,19,24 23:3,6,18,22,25 24:1,8,12,18 35:2 41:25 42:1,6,12,17 43:24 44:1,13 44:17,19 47:8 47:14,23 48:8 51:5 56:21 59:11 60:2 61:23 63:24 66:9 71:12 72:18 73:11 74:20 75:16,20 75:21,25 77:4 77:6,13 90:14 101:12,22 106:22 109:11 109:20 110:2,3 111:11 113:16 114:3,6,10,20</p> <p>description's 39:21</p> <p>descriptions 6:24 17:12 35:9,22 42:21 42:25 43:3,20 95:1</p> <p>designating 32:18</p>	<p>designed 7:19 10:12 42:4</p> <p>desperate 37:18 68:4,5 103:17,18</p> <p>desperately 68:2</p> <p>despite 6:14 39:20</p> <p>destructive 83:17</p> <p>detail 11:19 15:14 72:4</p> <p>detailed 15:18</p> <p>determination 28:8,11 30:17</p> <p>determine 35:7</p> <p>determined 25:18,22 37:20 58:17 78:21</p> <p>determines 28:4</p> <p>development 56:22</p> <p>devoy 3:12,12 4:22 5:14</p> <p>didmca 66:8 109:10</p> <p>differences 105:23</p> <p>different 9:18 9:18 11:2 14:5 14:21 27:11 46:3 55:2 58:19 60:18</p>	<p>61:6 72:8,12 73:13 76:23 77:23 84:22,25 85:12,23 90:3 90:19,20 91:2 92:19 105:16 106:23 112:1 115:13,15</p> <p>differently 72:14</p> <p>difficulty 67:18</p> <p>direct 7:13 19:7 59:16 85:24,24 111:3</p> <p>directly 74:17</p> <p>disability 15:4</p> <p>disadvantage 94:8</p> <p>disagree 102:24</p> <p>disapprove 25:4</p> <p>disclose 15:6 16:2 95:7</p> <p>disclosed 15:8</p> <p>disclosing 14:24</p> <p>discount 55:9</p> <p>discuss 19:21 34:11 58:24</p> <p>discussed 36:6 36:8 74:5 76:19 106:18</p> <p>discusses 42:12</p>	<p>disguised 23:2</p> <p>disparate 40:18 107:25</p> <p>display 7:3</p> <p>disposal 33:9</p> <p>dispose 57:20</p> <p>dispute 28:5</p> <p>disputed 37:19</p> <p>disputes 95:18</p> <p>disqualify 116:1</p> <p>disregarding 7:18</p> <p>distinct 7:24 8:14 16:25 91:15</p> <p>distinguishes 24:25</p> <p>distinguishing 86:11</p> <p>district 11:24 28:23</p> <p>divergence 57:3</p> <p>diverse 90:4</p> <p>divided 12:21</p> <p>division 28:1,4 28:11 30:3,5 30:19</p> <p>division's 28:7</p> <p>divorces 13:15 13:16</p> <p>doing 24:10,23 26:4 46:14 48:21 54:7,19</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[doing - eliminating]

<p>54:21 55:20,22 65:24,25 74:22 82:7 84:19 96:18 102:10 103:4 106:24 110:14 dollar 38:3 103:19 domestic 28:15 28:21 donations 106:6,10 doubt 50:3 109:22 110:2 doubts 57:19 dozens 64:11 drafted 104:4 drop 86:3 drugs 55:9 dry 54:8 dui 28:21 duis 28:15 dwarf 68:20</p>	<p>25:9,10,14,20 26:7,17,18 27:7,9,16 29:13 31:11 32:18 45:15,17 45:20 47:22 48:1 52:24 53:1,4 59:7 76:20,24 98:11 99:15 100:1,11 100:14,25 101:14,16 105:18,24 106:16 107:3 108:12 109:22 earnings 21:3 36:3 39:13,19 43:9 53:21 73:5 74:4,6 75:24 102:16 103:8,10 104:16,20,23 104:24 105:2</p>	<p>19:23 22:17,19 22:23,24 23:3 23:6,19,22,25 24:1,12,18 35:2,9,22 41:25 42:6,12 42:17 43:24 44:1,13,17,20 47:8,14,24 48:9 51:5 56:21 59:11 60:2 61:23 66:10 71:13 72:18 73:11 75:21,21,25 77:5,6,13 82:13 95:1,21 99:24 101:22 106:22 109:11 109:20 110:2,4 110:7 111:11 111:12,25 113:16 114:4,6 114:10,21,24 115:4,6,7,8,9 115:14,15,18 115:20,24 effective 14:19 49:5 effectively 11:4 effectiveness 38:23,24 39:8 39:14 effects 17:14,15 18:7 24:8</p>	<p>26:23 32:24 101:11 effort 57:18 71:23 either 41:20 48:6 59:18 60:13 82:9 84:23 112:22 113:22 elec 14:13 elect 60:25 61:7 elected 12:8 14:13 91:19 95:15 electing 14:18 election 12:11 12:12,17,19 30:10,16 59:12 60:11 61:3,25 64:10 85:1,15 85:20,22 91:14 91:15 110:23 elections 12:15 12:16 91:15 elector 47:18 electronically 117:3 elements 61:20 71:15 72:25 eligibility 106:2 eliminate 14:25 86:14 eliminating 6:11 15:5</p>
<p>e</p>	<p>ease 89:13 easily 50:14 88:7 easy 4:25 103:13 eat 50:24 education 51:14 56:19 71:25 effect 6:24 13:25 17:11,12 17:16 18:19</p>	<p>effective 14:19 49:5 effectively 11:4 effectiveness 38:23,24 39:8 39:14 effects 17:14,15 18:7 24:8</p>	<p>e 2:1,1,25 3:13 earliest 5:18 early 40:11 61:4 earned 17:20 19:1,4,9,13 20:8,9,10,17,21 21:3,4,7,23,25 22:15,15 23:7 23:10,14 24:5 24:9,13,22</p>

[else's - execution]

<p>else's 81:3 email 117:4,8 embrace 17:5,6 18:12 emergency 52:10 emphasis 11:7 emphasize 15:15 25:21 emphasized 91:22 employed 66:19 employee 21:7 21:8 employer 19:8 19:9,11,16 21:6 26:18 53:2 100:11,20 101:16 104:12 employers 27:17 101:17 enact 10:16 25:5 58:13,21 98:18 enactment 20:1 encompass 74:8 encompassed 12:10 113:14 encompasses 40:8 encourage 97:7 encumbered 14:5</p>	<p>endeavor 89:24 ended 76:15 energy 50:23 enforce 31:20 enforced 66:5 enforcement 31:20 66:24 74:9 93:7 109:13 engaging 72:5 enjoin 44:2 112:2 enrolled 21:25 ensuring 35:17 entice 36:11 entire 38:12 77:16 85:18 98:8 108:15 109:11 entirely 34:12 58:23 85:25 entirety 84:16 99:6 entities 19:15 19:17,20 27:19 35:21 101:3 entitled 6:2 equalize 94:1 equally 62:10 equivalent 30:4 eric 34:9 escape 46:11,24 escaping 47:5 especially 55:7 64:14 72:8</p>	<p>74:18 essence 57:19 71:19 essentially 49:7 49:13 50:8 61:17 66:20,24 71:3 establish 43:18 43:18 68:19 established 63:25 96:9 establishes 71:3 74:16 establishing 43:3,13 70:12 73:3 estate 110:12 estimation 29:25 evade 74:22 evading 74:10 event 118:7,11 everybody 85:5 everybody's 110:4,9 evidence 29:11 ewa 19:1,2,6 29:19 ewas 57:24 ex 83:13 exact 11:14,15 92:10,20 93:13 exactly 26:4 46:13 49:2 55:24 66:10</p>	<p>77:6 86:15 91:11 example 15:17 23:7 28:14 30:13 70:12 78:19 85:12 examples 41:5 exasperation 61:17 excellent 76:13 except 6:5 50:11 exception 104:19 exceptions 68:24 excess 37:24 excessive 40:23 excessively 40:7,10 102:19 exchange 116:12,23 excludes 45:3 exclusive 96:10 exclusively 40:1 100:2 exclusivity 96:9 96:14 execute 50:21 executing 10:1 68:19 execution 6:7 8:11 15:3 69:4 93:1</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[executive - finally]

<p>executive 29:23 115:10</p> <p>exempt 31:12 83:13 100:9 101:4 108:9,11 108:14</p> <p>exemptions 10:6 15:1,5</p> <p>exempts 108:12</p> <p>exercise 87:8 87:10,12</p> <p>exhale 57:2</p> <p>exhibit 18:23 20:16 27:1</p> <p>exist 58:10,12 66:25 68:21 69:6 70:10 107:1</p> <p>existence 52:13</p> <p>existing 23:5 23:15,21 25:6 53:15 70:11 71:2 98:18 114:22</p> <p>exists 109:5</p> <p>exorbitant 53:7</p> <p>expand 12:4 27:15</p> <p>expanse 53:21 54:7</p> <p>expansion 27:21 67:8 71:2</p> <p>expansive 101:7</p>	<p>expected 7:10</p> <p>expecting 53:19</p> <p>expects 52:15</p> <p>experiences 54:3</p> <p>expert 50:15</p> <p>experts 88:10</p> <p>explain 24:13 42:25 99:10 100:4</p> <p>explained 12:6 12:14 17:24 18:8 22:12,13 92:12</p> <p>explains 22:7 23:3,6 36:4 38:16 42:5</p> <p>explicitly 25:8 29:18</p> <p>expre 97:11</p> <p>express 47:10</p> <p>expressed 20:14</p> <p>expressly 20:8 45:3 47:25 83:5 97:12</p> <p>extension 22:18</p> <p>extra 78:16</p> <p>extremely 36:13</p>	<p>facilitate 57:17 82:22 99:2</p> <p>facilitates 8:2 100:17</p> <p>fact 10:16 13:18 51:25 52:13 58:10,18 59:3 63:8 64:11 65:12 69:10 73:12 81:15 82:21 87:18 90:3,14 91:17 109:10</p> <p>factors 37:22</p> <p>facts 83:3,9</p> <p>fail 42:23 43:20 102:9</p> <p>failed 34:16 42:2</p> <p>failing 7:3</p> <p>fails 42:19 111:8</p> <p>failure 39:7 106:5 113:15</p> <p>fair 8:3 57:11</p> <p>fairly 6:19 9:24 14:6</p> <p>faith 72:20 74:7 75:13 110:6,14</p> <p>faithful 55:13</p> <p>fall 40:19 46:4 46:12 47:2,4 48:5 60:17 81:17 106:16</p>	<p>familiar 7:7</p> <p>far 55:22 78:10 79:7,10 82:21 107:20,20</p> <p>fashion 116:15</p> <p>fashions 91:2</p> <p>favor 113:4</p> <p>favours 113:7</p> <p>february 18:24</p> <p>federal 10:18 14:23 66:15 81:6 93:15,22 93:24 94:9</p> <p>federally 10:14 94:2</p> <p>fee 53:2 106:3,4</p> <p>feel 51:2 57:1</p> <p>fees 23:9 24:16 45:19 48:3 53:7 105:20,21 106:5,9</p> <p>feldman 1:11 4:11 5:4 118:21</p> <p>felt 32:18</p> <p>fi 3:20 111:15</p> <p>field 10:17</p> <p>filed 5:17 18:23 30:9,15 55:11</p> <p>filings 51:19,20</p> <p>final 9:8 44:4</p> <p>finally 18:6 26:22 54:5 59:24 74:25 108:8</p>
	<p>f</p>		
	<p>face 54:4</p> <p>faces 8:5</p>		

[finance - gallery]

<p>finance 72:19 financed 74:1,2 financer 52:22 financial 1:11 3:20 5:3,19 6:17 8:14 9:10 10:13,14,18 13:11,16,18 18:25 19:18 30:3,20 33:21 52:11 53:19 72:9 94:8 101:5 118:20 financially 37:18 102:24 find 53:12 61:20 80:24 113:19 115:19 fine 88:20 96:22 finish 77:10 fired 49:11 firemen 78:15 firm 3:8 first 4:17,18 6:12 8:12 9:22 11:16 15:16 34:22 35:7 42:12 44:11 48:22 56:1 63:22 65:2 70:17 73:17 75:22 88:2 90:13 92:24 94:15 95:23</p>	<p>fit 13:14 46:20 91:3 five 60:8 flawed 48:9 flip 79:14 flout 35:17 focus 9:21 10:22 39:21 40:4 focused 40:1 86:14,15 105:4 105:5 followed 8:4 following 35:11 follows 67:15 forgiveness 40:16 form 25:16 93:6,6 112:22 forth 18:2 105:22 111:16 forthcoming 28:2 forward 4:1 24:3 83:25 114:7 found 45:6 71:25 foundation 51:11 four 2:6 4:12 4:20 49:11 54:23 82:5,8 90:3</p>	<p>framework 35:1 60:25 64:22 free 34:15,24 97:17 frenetic 49:8 friend 11:25 89:24 front 56:2 83:10 113:23 frustrating 78:8 87:20 frustration 77:25 frustrations 58:11 full 7:4 16:2 17:23,25 26:9 26:13,16 64:13 64:19 80:23 81:13,19 82:3 82:14 86:8 100:8 111:13 115:3 118:5 function 13:7 61:21 67:4,5 functionally 12:24 21:14 38:18,21 41:16 45:24 91:25 92:2,14 fund 37:5 funded 37:4,5,6 funder 37:10 37:12</p>	<p>funders 102:12 103:10,13 funding 3:4,5 5:8 9:5 33:22 34:3,5,6,8 36:16,17,18,19 36:23 37:3,25 38:6,13,13 39:1,16,18,20 40:24 41:6,13 41:19,23 42:10 42:14 43:12,14 43:17,20 53:9 57:25 76:23 90:23 102:25 103:3,5,9 104:20,23 105:6 funds 37:8,14 114:2 115:12 furnish 83:24 further 39:5 83:20 105:6 118:10 futile 24:6,7 future 21:3 36:2 43:9 74:4 74:6 87:10 103:12 104:20 104:22,24 105:2</p> <hr/> <p style="text-align: center;">g</p> <hr/> <p>g 2:1 gallery 34:10</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[game - guys]

<p>game 59:11 84:8 103:21,25</p> <p>gaming 13:19 110:22</p> <p>garbin 25:1</p> <p>garnish 70:13 70:25</p> <p>garnishment 6:7 8:11 10:1 15:2 39:14,15 69:4 73:5 75:24 92:25</p> <p>gather 85:18</p> <p>general 7:15 12:11,19 13:15 18:24 50:19 60:11 64:10,21 73:1 80:10 85:15,19,22 91:14 102:19 107:13,20</p> <p>general's 4:14</p> <p>generalities 13:12</p> <p>generality 40:23</p> <p>generalized 13:21 92:9</p> <p>generally 10:2 46:7 57:16 108:25</p> <p>generals 59:12</p> <p>generic 91:4 92:7 94:14</p>	<p>germane 21:14 38:19,21 41:16 67:4 92:1,3,14</p> <p>give 32:6 44:20 52:19,23 53:1 82:5 103:22 114:11</p> <p>given 50:20 75:13 114:11</p> <p>gives 52:15</p> <p>giving 28:24 38:1</p> <p>go 4:1,17,18 5:22 10:23 16:19 32:8 34:1 44:9 49:9 53:6 54:18,18 54:22 57:19 60:22 63:14 65:1 68:10,12 70:9 71:9 72:17,22 73:9 73:19 83:10,25 85:1,19 88:8 89:6 103:10 110:8</p> <p>goal 42:21,23 42:25</p> <p>goals 42:3,5 43:21,22</p> <p>goes 45:20 64:11 85:1 108:3</p> <p>going 9:21 21:11 25:13</p>	<p>30:24 31:14,19 31:24 32:7,10 46:17 47:13,24 49:10 51:1 54:6,13 57:12 64:7,8,16 66:12 67:2 68:2 78:2,16 79:5,9,24 80:3 82:6 83:16 88:18 94:4 95:14,17,20 96:1,3,5 102:15,17 107:23 108:23 109:10,16 111:18,19 112:2 113:9 114:7,15 115:25 116:5</p> <p>good 2:11 3:7 3:12,18 4:13 5:23 16:20 34:2 44:6 48:15,21 51:15 69:9 72:20 74:7,20 75:12 87:9 105:10 110:6,14 114:11 117:9</p> <p>goods 41:2</p> <p>gosh 102:19</p> <p>gotten 55:1</p> <p>governed 8:19</p>	<p>governing 36:25 37:2</p> <p>governor 26:2 32:21 97:20</p> <p>graduate 72:19</p> <p>grandiose 54:13</p> <p>granted 79:1</p> <p>gratuities 106:6,10</p> <p>graves 2:13 44:6,7,10 48:13 105:10 105:11 117:12</p> <p>great 15:14 59:6 67:1</p> <p>greater 28:25 52:23</p> <p>greatest 51:20</p> <p>ground 15:10 48:25 49:2,3 102:5,6,7,8</p> <p>grounds 44:11 83:24</p> <p>guess 4:17 5:4 5:18,20 16:18 45:9 49:22 63:11 65:25 81:6</p> <p>guise 8:17</p> <p>guy 104:9,10</p> <p>guys 32:3</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[hallmarks - identify]

<p>h</p> <p>hallmarks 50:17</p> <p>hand 60:8,10</p> <p>handed 50:13</p> <p>handled 7:8</p> <p>happen 83:12 83:18 108:20</p> <p>happened 91:13</p> <p>happening 47:12 79:20,22 79:23 85:6 106:21 115:23</p> <p>happens 50:17 72:7 82:24,25 97:10</p> <p>happy 54:10</p> <p>hard 4:3 72:22</p> <p>hart 3:9</p> <p>hate 64:7</p> <p>hear 5:24 30:24 57:5 89:20</p> <p>heard 30:23 52:4 57:22 59:17,20 79:8 91:6</p> <p>hearing 1:10 2:6 4:3,20 5:1</p> <p>heart 25:24</p> <p>heavily 34:14</p> <p>heed 52:17</p> <p>held 12:23 61:25 62:5 84:20</p>	<p>heller 7:25 34:12,14,18,19 34:21 36:4 38:15</p> <p>heller's 34:16</p> <p>help 103:14</p> <p>helton 11:16 13:3 14:11 34:20,21,21,24 36:4,4,4 38:15 38:16 40:8,9 42:2,5 44:13 56:24 57:12 59:19,19 60:5 60:7 61:24 62:18 63:3 64:7,14,17 65:1 72:1 86:21 91:7,9 91:20,22 92:10 92:11 95:6,9 95:11</p> <p>helton's 63:21</p> <p>herbst 110:21 112:5,6</p> <p>hiding 62:25</p> <p>high 35:16,23 42:22,23 43:1 44:22,25 45:3 45:8,11,14,23 46:1 47:15,16 47:21,25 68:7 73:2 93:3,4,4 93:20 94:12 105:5 106:25</p>	<p>113:8</p> <p>higher 69:8</p> <p>highlight 82:1</p> <p>highlighting 109:9</p> <p>highly 104:17</p> <p>hire 59:9</p> <p>hired 115:24</p> <p>history 28:12</p> <p>hit 97:2</p> <p>hmm 29:10,21 30:7 56:6,16</p> <p>hold 109:2</p> <p>holland 3:8</p> <p>holy 71:15</p> <p>honor 2:11,22 3:7,12,19,24 4:9 5:21,23 6:16 7:5 9:15 9:23 10:7,23 13:12,23,24 14:10,22 15:12 16:16,20,21 18:21 20:4 21:18 22:16 26:8,23 29:7 32:10,24 33:15 33:23 34:2 44:3,6,10 48:11,15 71:5 76:1 89:10,18 89:21,24 91:7 92:10,23 93:10 94:10 95:3 96:6,23 99:18</p>	<p>102:3,4 103:25 105:3,7,10,21 108:9,18 110:20 116:9 117:12</p> <p>hope 6:10</p> <p>horse 50:16</p> <p>host 7:23 8:14 14:5,25 15:5 98:2,15</p> <p>hours 2:13 5:9 16:18 44:8,10</p> <p>household 41:3</p> <p>houses 32:21 97:19</p> <p>housing 51:4</p> <p>huge 40:20</p> <p>hypotheticals 72:5</p> <hr/> <p>i</p> <hr/> <p>idea 82:13 87:4 109:20 113:5 114:22,25 115:9</p> <p>ideas 83:18</p> <p>identical 6:2,4 7:22 8:7,9 73:14,18 76:8</p> <p>identification 113:21</p> <p>identifies 42:18</p> <p>identify 2:9 42:20 63:4,6 95:7</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[ignore - incorporated]

<p>ignore 107:3 ignored 112:13 ignores 20:24 ignoring 8:10 image 6:12 immaterial 65:14 impact 8:13 9:19 12:15 13:16 14:5 27:6,20,23 28:4,9,16 29:1 29:12,15,25 30:20 31:25 32:3 39:8 78:4 95:17 111:15 impacted 90:4 105:16 impacts 13:17 13:18 14:21 30:12 32:14 91:2 implemented 10:12 implicated 64:5 impliedly 83:5 importance 59:5 important 19:19 34:13 52:6 55:17 58:19 62:10 98:19 99:17 impose 22:5,5,6</p>	<p>imposed 93:22 impossible 63:9 impugn 49:22 inability 53:25 106:8 inadequate 22:17 23:23 24:1 44:1 inarguably 75:5 inaudible 5:21 6:14 7:14 11:5 14:11 35:24 39:22 40:15 44:1 45:7 46:10 48:18,19 48:24 49:2,7,9 49:13,15,17,21 50:2,5,10 51:2 51:3,15,24 52:12,12,16 53:22,24 54:2 54:7,15,20 55:6,7,9,15,19 56:3,4,15 57:4 57:8,10,16,22 57:22 58:7,13 58:15,16,20 59:2,6,7,9,13 59:21,22,25 60:2,6,8,11,11 60:16,17,18,21 60:22,23,23 61:6,10,12,18 62:2,3,4,5,9,12</p>	<p>62:13,16,20 63:3,3,7,8,10 63:18,20,22,22 64:3,8,13,13,14 64:19 65:3,5,6 65:14 66:4,6,7 66:7,18,22 67:11,14,17,23 67:23 68:6,18 68:22 69:7,14 70:12,13,13 71:2,4,7,14,20 72:3 73:1,6,12 73:24 74:13,16 74:20 75:5,5,6 75:7,8,9,14,15 76:6,9,12,16 77:1,11,13,14 77:15,16,20,21 78:1,6,9,11,15 78:18,20,23 79:12,15,17,22 80:6,16,17,19 80:21 81:5,7 81:18,22 82:17 82:18,25,25 83:1,13 84:3 84:13,18,20,25 85:4,5,7,14,15 85:20,21 86:9 87:1,5,6,12,21 87:23 88:1,4 88:16,19,21 90:15 92:25 93:10 95:2,19</p>	<p>102:14 103:13 104:12,17 105:1 106:2 107:4,25 109:1 109:3,11,14,16 109:21,21 110:4,17,17,19 112:8 116:14 116:22 117:6 117:11 include 17:25 18:1,3 20:17 24:18 26:12,16 40:11 72:4 97:25 98:14 100:6,7 104:8 104:9 111:13 115:3 included 29:9 115:2 includes 26:6 45:12,15 47:16 47:19 65:3 102:22 including 8:21 27:12 66:6 income 36:3 40:18 43:9 53:20 74:5,6 104:21,23,24 105:2 inconsistent 102:6,7,8 incorporated 3:10 16:22</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[incorporated - interest]

17:22 increased 104:18 incredibly 87:20 independent 31:5 58:14 independently 60:13 indexed 75:8 indicated 5:25 28:1 40:9 60:3 indication 28:7 indifferent 87:9 individual 37:5 37:9,14 41:3 individual's 38:10 individually 41:7 individuals 37:6 38:7 53:23 54:2,16 industries 9:20 industry 34:7 49:4 90:1,5,24 90:25 infects 94:25 inform 17:14 42:6 47:12,24 information 106:7 informed 19:25 35:4 41:24	inhabit 62:1,8 inherent 64:13 initiative 5:5 6:1,13,15 7:12 7:14,20 8:3,6 8:12,13 9:23 10:21 11:22 12:2,6,9,13,24 15:9,16 20:4 22:4 25:1,4 26:5 28:18 30:5,14,18,18 30:25 33:7,10 42:7,19 44:16 44:19,23 45:6 45:7,11 46:4 46:16 47:9,19 48:10 50:18 55:18 56:1,19 57:15 58:20 59:15 60:7,14 60:16 61:21 65:3,10 66:3 66:14,25 67:5 67:6,13 71:25 74:10,15 75:2 79:5 80:11 81:7 82:22 83:14 84:4,6 85:6 86:25 91:4,25 92:24 94:5,15,18,22 95:9,20,24 98:2,15 106:14 108:6,9,13,15	110:23,25 111:1,4 112:17 113:6,18 114:12 115:1 initiative's 35:7 38:22 45:9 48:6 92:3,15 92:16 initiatives 5:11 7:22 8:7 9:4 10:21 11:2,18 13:10 15:23 49:14,25 51:9 52:2 54:7,12 55:11,19 57:21 58:10 60:14 64:2,6,22 72:6 77:16 87:14 90:7 92:18 93:14 94:6,24 113:7 injured 104:13 104:13 injury 37:9,17 38:11 102:13 installment 9:6 9:6,7 96:7 institution 9:10 institution's 10:10 30:3 institutions 10:13,14,18 94:3,9,10,19 instruction 83:3,19 84:11	instruments 52:11 53:19 insufficient 42:1,2 53:16 insurance 9:7 37:19 103:21 103:24 107:19 integral 67:5 integrated 19:8 19:9 26:18 100:11 101:16 intend 42:4 intended 47:14 interact 58:6 interest 9:22 23:8 24:16 35:23,24,25 40:2,4 42:22 42:24 43:1,3,6 43:14 44:22 45:1,3,8,11,14 45:19,23,24 46:1 47:15,17 47:21 48:2 52:19,23 53:7 53:20 62:6 65:11,20,22,25 66:19,22 67:1 67:11 68:7,9 72:21 73:3,4 73:21,23,25 74:11,23 79:25 86:14 94:12 103:7 105:5,20 106:4,25 108:5
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[interest - knows]

<p>108:8 109:25 110:1,7,9,9 112:23 118:10 interested 88:14 interesting 95:10 104:1 interests 17:10 18:18 22:4,8 72:9 99:13,15 101:21 interlaced 60:6 interpreted 65:20 interrelated 14:1 91:17,18 intertwined 12:16 intervals 8:25 intervener 4:10 interveners 48:19 intimate 11:20 invalid 44:2 49:15 invalidate 61:9 87:18 invalidated 78:19 investigate 82:12 investment 42:15 investopedia 36:9 40:25</p>	<p>involved 38:12 72:9 83:3 103:16 114:2 involvements 57:6 involves 13:20 46:17 62:25 84:23 88:13 irs 37:3 issue 7:6 64:6 65:4 81:19 84:19 95:4 108:4 110:6 issued 29:14 56:24 issues 34:25 37:21 85:16 112:11,12 it'd 72:17 itemize 68:22 items 15:8 47:25 iteration 6:5</p>	<p>judge 16:12 81:16 judge's 56:4 judges 83:8 judgment 10:4 40:3,15 41:22 68:23 93:6 104:2,4,7,11 judgments 10:4 judicial 10:4 83:3,19 84:11 jules 4:13,14 jurisdiction 31:14 jurisprudence 56:20 78:8,10 78:10 84:13 jury 2:19 justice 28:23 justices 61:15 61:16</p>	<p>77:12 know 2:18 6:8 6:19 7:6 8:1 14:22 28:12,14 29:2,3 31:16 31:23 47:17,18 47:19 48:22 49:21 54:18,24 54:25 55:12,18 55:19 56:14 57:4,11,14,23 59:17 60:5 61:5,10 65:2,6 65:21 66:12 68:17 69:10 75:19 76:17 77:7,19 78:6 78:24 79:11,20 82:11 83:2 84:1 86:2,10 86:10 87:5 88:9,14 90:18 91:8 93:4,21 95:13 102:16 103:5 104:13 105:18 107:11 109:8,19,23 111:9 112:4,10 112:21 114:24 knowledge 11:21 36:15 knows 7:25 56:5</p>
		k	
	j	<p>kaempfer 2:12 44:7 kate 1:11 4:11 5:4 118:20 keep 64:7 69:1 69:2 kept 113:23 key 78:13,17 keystone 59:19 kind 69:24 105:22 kinds 29:5 52:11 65:6</p>	

[lack - lifespan]

l	82:11 84:18,23	27:25 29:24	108:7,7
lack 36:15	84:24 86:23	32:1 38:18,23	lending 4:12
laena 4:13	91:24 93:22	50:7 57:22	20:12 21:1,10
land 54:8	94:23 97:21	58:5,11,14,17	25:22 31:12
landlord 51:19	98:17,18,18	98:24 99:3,3	35:16,23 36:9
language 23:16	115:25	115:5	36:10,17 38:15
24:19 35:9,11	laws 15:1 20:12	legislature	39:4,4,6,7,9,22
38:8 73:8	20:13 28:13,14	20:15,24 21:9	40:2 41:20,21
99:17 101:8,8	28:15 31:18	25:18,21 26:2	42:9,11,22,24
101:23	78:1 100:22	28:16 29:4,14	44:21,22,24
large 81:22	lawyer 52:1	31:3,17,21,25	45:1,2,3,8,11
95:17	lawyers 103:14	32:18 33:2,12	46:1,1,9 47:15
largely 51:23	103:16 107:15	36:20 50:9,12	48:1,20 69:12
58:10	107:18	58:1,2 78:3,14	90:13 93:3,4
larger 53:21	lcb 28:3 30:5	80:4 85:2,19	94:3 98:12
81:7	30:12,16,19	88:7 96:8	100:22 102:6,7
las 42:15,16	lead 3:20 41:24	97:15 115:11	104:6 105:5
46:23 56:17	87:17	115:14	106:25
lastly 15:12	leader 97:21	legislature's	lengthier 20:3
105:3	leads 23:19	27:7	level 79:4
late 23:9 24:16	leave 87:19	legitimate	li 31:17 103:12
106:3	left 2:8 54:6	37:16 71:23	liability 22:6
law 3:8 9:14	legal 3:5 34:4	72:20 82:20	37:20
10:12 11:7,13	34:11 37:12	lender 20:13	liberality 60:4
12:5 14:15	41:10 57:8	52:22 55:8	license 27:13
15:3,24 21:16	legislation 7:13	91:4 100:22	34:5
23:5,16,21	17:18,19 21:15	109:1,1	licensees 27:12
25:5 26:2	25:4,8 26:12	lenders 8:23	100:2
31:19 32:21	58:7,14,21,22	20:10 24:15	life 9:7 47:2
35:18,19 36:25	58:22 66:15	29:13 32:19	107:21,24
45:2 46:24	88:13 97:9	35:17,20 36:11	lifeline 38:2,4
49:3 56:23	98:1,8,10	36:14,18 38:5	103:22
60:9 62:22	111:3 114:23	69:10 74:14	lifespan 52:3
64:4 69:5 71:2	legislative	90:8,9,11,20,22	52:17 91:6
71:3,4 73:6,21	18:21 25:16	101:1 104:8	92:8

[lifetime - made]

<p>lifetime 67:15 light 109:3 likely 18:18 82:3 99:13 likes 90:1 limit 24:2 37:20 111:24 limitation 108:1 limitations 14:2 73:22 75:13 limited 14:9 33:11 38:24,25 39:15 65:21 88:16 93:3,8 93:19 94:11,11 94:13 limiting 65:11 67:10 68:14 limits 56:1,5 111:4 line 49:6 list 45:20 86:1 listed 118:7 listen 113:20 literally 56:22 67:22 80:1 litigating 103:20 litigation 9:5 34:6,8 36:16 36:17,18,19,23 37:3,10,17 38:6,13 39:1</p>	<p>39:16,17,20 40:24 41:6,14 41:19,23 42:10 42:14 43:12,14 43:17,19 53:8 57:25 76:23 90:23 102:12 102:25 103:3,5 103:9,12,23 104:19,20,23 105:1,6 little 4:2 55:5 55:12 67:1 104:9,10 114:21 live 55:4 83:6 living 73:3 llc 3:4 34:4 loan 6:3 20:18 20:22 21:10,15 21:17 24:14 36:2,19,24 37:4 39:2,16 40:16 43:8,11 46:19 47:25 53:25 58:3 65:9 67:24,25 68:8 70:24 71:9 74:4 98:11 100:18 loans 8:19,22 8:24 9:5,6,10 10:7,20 13:15 20:6,6,9 21:1 21:12,12,15</p>	<p>22:25,25 23:2 23:4,18 32:19 35:13,16,18,18 36:1,1,2,12,25 37:2 38:5 41:4 41:4,5 43:6,7,8 43:8,8 45:3,4,4 45:5,5,9,12,13 45:13,14,18,18 45:21,22,24 47:16,17,20 48:1,3 53:10 57:24,24,25 62:7,8 65:11 65:13,16 67:11 69:13,18 70:15 73:23 74:2,3,3 74:13 94:13 97:10 103:1,3 103:6 104:22 105:2,23 106:15,20,21 107:4,5,6 lobbyists 58:6 log 3:24 62:17 62:19,20,24,24 63:8,20 90:16 long 11:11 54:21 55:20 59:24 64:21,23 72:2,17 83:2 86:25 88:22 110:16 112:15 116:17,20</p>	<p>longer 55:21 look 2:20 4:24 8:24 9:3 15:15 15:17,22 44:16 52:8 59:22 70:7 79:11 89:6 93:12 96:4 101:8 102:20 114:14 114:25 looked 21:9 looking 35:8 57:3 61:19 75:20 91:7 98:4 looks 46:23 loss 67:22 lot 7:8 33:2 57:23 87:4 97:23 105:15 112:24 114:17 115:22 lots 59:20 lower 68:7,9 110:1 lungs 86:5 lvr6622796 1:20</p>
m			
<p>m 3:2,8 95:6 machine 40:12 madame 36:19 maddox 16:12 made 9:10 13:14 28:7</p>			

[made - money]

<p>59:4 71:23 74:19 79:3 81:7 93:1 97:1 112:13,25 114:6 mailer 71:21 main 71:24 majorities 26:1 32:20 33:1 majority 32:13 32:17 63:19 71:6 97:21 make 2:16 3:17 9:17 10:12 16:21 30:17 32:25 47:11 57:17 59:10 67:19 70:3 71:11 80:4 91:3,24 92:4 96:4 99:23 103:14 108:17 108:19 112:15 makes 25:2 51:17 106:15 115:21 making 15:19 15:24 35:18 41:13 male 3:16 mall 55:8 mandate 79:15 mandatory 78:12,13,16 80:3,10</p>	<p>manner 13:1 14:17 47:6 110:14 112:23 march 1:12 market 36:14 37:16 markets 100:17 marks 103:13 masked 23:1 material 42:20 43:21 101:11 materially 42:18 43:23 matt 3:8 16:21 96:23 matter 1:10 3:14 4:19 7:7,8 11:12 13:1 32:10 36:6,8 52:20,21 64:3 64:4 82:23 84:14 106:17 111:2 matters 17:6 18:12 50:4 65:9 max 74:12 maximum 35:24 43:3,13 43:15,17 73:3 73:25 mean 28:20 32:6 50:25 69:21 70:8 86:7 87:25</p>	<p>103:6 meaningless 98:20 means 12:8,17 19:10 100:20 103:7 meant 72:19,20 108:6 measure 18:1 35:23 54:21 59:1 61:13 73:2 77:3 81:13 88:15 measure's 73:2 measures 49:18 50:6 74:17 80:13 81:14 85:20 mechanics 40:10 mechanism 79:16 mechanisms 66:5 meet 18:16 22:10 24:19 59:14 88:22 110:25 meetings 50:13 88:10 members 31:3 mention 43:13 43:19 64:12 76:22 94:21 99:7</p>	<p>mentioned 13:13 43:10 met 49:17 73:1 michigan 66:21 middle 56:4 mike 16:21 million 79:19 minimum 40:17 minute 57:14 64:21 89:13 miscellaneous 77:12 84:3 misleading 17:13 22:21 23:19,23 42:18 43:23 71:18 73:8 misled 75:14 mississippi's 67:3 mistake 86:22 mm 29:10,21 30:7 56:6,16 model 49:6 modifying 95:22 moment 51:1 monetary 10:11 93:16 94:20 money 13:20 19:3 31:7,10 31:24 32:7 37:22 46:17</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[money - noting]

<p>50:21,23 52:15 52:17,21,23,24 53:1,3 67:16 68:1 69:23 78:16 80:9 100:25 111:16 112:22 113:25 114:5 months 54:25 112:11 morning 2:11 3:7,12,18 4:13 16:20,21 17:2 34:2 44:6 48:15 105:10 morris 3:7,8,13 16:20,22 29:7 29:11,16,18,22 30:2,8,22 31:1 31:9,22 32:9 32:16,23 33:15 33:18 96:23,23 mortgages 41:5 motion 76:18 motives 49:23 move 24:2 64:1 71:12 73:20 77:9 80:23 multiple 62:15 62:21 97:5,6 multitude 9:2 11:2 16:6 94:25 95:7</p>	<p style="text-align: center;">n</p> <p>n 2:1 3:2 naaden 118:3 118:17 name 2:22 3:7 112:6 names 112:7 narrow 31:14 nature 8:15 71:7 74:12 88:12 near 86:6 nearly 97:19 necessarily 17:7 18:13 26:24 70:14 necessary 43:5 88:15 need 10:24 11:8 26:3,3 39:19 44:15 52:10 53:4,5,6,24 54:1,3,13 68:2 68:4,5 78:12 80:15 83:22 92:2 109:20 110:1 111:19 113:21 needed 28:22 needs 8:4 52:8 67:16,19 72:21 106:22,23 neither 6:21 48:2</p>	<p>nephews 54:25 neutral 73:20 nevada 3:4 4:12,15 7:3 9:14 10:15 11:7,13,15,16 11:25 12:3,5 13:22 15:24 18:9 31:3 34:3 34:6,8,21 35:11,17 45:1 45:2 46:24 48:20 49:18 50:6 51:17,18 51:21 53:13 58:12,21 60:9 77:5,17,19,21 78:7 80:25 86:4 88:23 91:11,16,24 93:24 94:6,23 101:20 107:16 nevada's 20:12 20:13 31:4 51:14 nevadans 1:11 3:20 5:3,19 6:16 21:21,22 21:24 33:21 118:20 never 80:25 91:1 96:14,15 107:8 108:19 new 18:25 25:5 25:12 28:14,15</p>	<p>28:21 32:14 46:6 58:24 71:3 78:21 84:18 91:6 97:9 98:18 100:19 101:6 115:11 nexus 11:12 nice 67:1 nieces 54:24 nomination 60:9 non 37:8,15 42:24 43:11 47:25 48:3 52:20 102:7 103:6,6,9 nonargument... 22:21 71:17 north 55:7 note 18:6 27:1 27:22 28:2,5 29:9 30:2 31:13 32:12 noted 13:7 92:23 notes 57:15 noth 93:18 notice 18:17 notifies 99:12 notify 17:9 99:14 111:12 113:15 noting 7:12</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[notion - outstanding]

<p>notion 65:5 68:3 77:25 79:17 82:17 83:11,16 nrs 6:6,22 7:18 8:20 11:14 15:17 17:4,8 18:11 21:18 22:10 23:24 36:21 43:24 64:5,8 68:16 84:6 96:5,7,8 99:5,7 101:24 106:1 nugatory 108:1 number 2:7 5:3 9:17 12:18 27:3 28:22 30:14,18 49:10 66:9,10,25 67:5,6,7,10,13 69:11,12 73:15 74:25 75:17 86:12,12,13,13 86:17,18 87:18 87:19,20 95:18 97:1 111:5,6 numerous 13:6</p>	<p>objectively 73:7,24 74:7 75:4 76:16 obligation 103:8 obligations 41:12 102:14 observation 90:1 obstruction 82:23 obtain 27:13 obtained 37:12 41:10 obvious 63:18 82:23 obviously 6:8 31:7,10,19,24 60:5 61:24 91:9 113:7 oc 1:14 offer 21:16 offers 21:14,20 100:17 office 4:14 91:19 officeholders 12:8 officials 61:1,7 oftentimes 53:11 okay 2:4,4,6,15 2:15,18 3:1,6 3:11,15 4:4,8 4:16 5:18,22</p>	<p>32:15,22 33:14 33:19,24 34:23 44:4 48:14 70:3,6 71:10 73:10,19 76:4 76:7,14 85:6 88:3 89:15,19 104:3 105:9 107:5 109:22 110:3,21 116:10,20,23 117:7,8,10 old 10:11 omits 42:13 omitting 43:19 omnibus 11:6 107:12 once 50:13 51:4 62:18 63:25 84:23 86:21 88:15,17 99:8 115:23 open 60:15,21 63:6 operate 64:22 109:24 operated 60:24 operating 8:9 37:23 opinion 116:3 opponent 32:25 82:9 opponents 11:17 12:9</p>	<p>opportunity 77:3 79:18 84:11 108:19 oppose 33:8 opposed 57:8 59:15 80:4 84:4 opposing 49:22 opposite 11:14 11:15 57:11 91:11 92:11 opposition 11:6 89:25 98:25 opt 10:9,16 66:7,14,16,17 74:11,18,24 76:19 93:15 94:7,17,22 opted 93:24 opting 14:23 order 16:6 27:9 44:14 46:20 82:2 89:16 116:6,17 orders 116:12 117:8 ordinary 9:10 outline 17:1 outlined 21:22 outs 66:7 outside 15:23 82:8 outstanding 106:5,9,12</p>
o			
<p>o 2:1 3:8,13 o'clock 2:3 5:2 objected 112:10 objections 116:24</p>			

[overall - people's]

<p>overall 11:12 36:5 39:23 40:6,7,21 92:3 115:1</p> <p>overarching 64:23 68:20</p> <p>overbroad 13:5 14:4 16:10 101:11</p> <p>overhauling 64:9 65:18</p> <p>oversight 27:16</p> <p>overview 18:20</p> <p>overwhelming 26:1 32:20 33:1</p> <p>owed 41:1 69:23</p> <p>owes 41:8</p> <p>owing 41:8</p> <p>own 38:10 51:3 63:2 86:16 103:24</p> <p>owner 12:20</p>	<p>paper 40:12</p> <p>par 75:22</p> <p>paragraph 73:16 75:23 76:5</p> <p>paragraphs 73:17</p> <p>pardon 56:9 76:1</p> <p>part 70:17 84:16 98:10 115:10</p> <p>participate 101:4</p> <p>participated 61:15</p> <p>particular 9:19 51:1 62:22 83:3 84:12 87:10 97:15</p> <p>particularly 63:15 101:15</p> <p>parties 49:11 88:14 90:10 100:12 101:4</p> <p>partisan 12:8 13:2</p> <p>partner 19:15 19:17 27:18</p> <p>partnered 101:19</p> <p>partnering 74:13,23</p> <p>partners 19:10 21:6 100:21</p>	<p>101:2</p> <p>party 19:15 100:9 101:3</p> <p>pass 28:13 60:13,16 63:2</p> <p>passage 91:23 108:14</p> <p>passed 17:19 18:21 25:11 26:1 31:18 32:20 33:1 78:1 97:19</p> <p>past 7:17</p> <p>patterns 10:3</p> <p>pay 6:3 36:12 36:13 37:7,19 52:24 53:3,7 53:12,18,25 63:14 67:24 68:1 69:14,22 70:9 79:16 80:5,6,9,15 106:5</p> <p>payday 6:3 8:19,22,23,25 9:4 10:7,19 19:5 20:5 21:12 35:13,16 35:18 36:1 41:5 43:8 44:21,24 45:2 45:8 46:1,8 53:10 55:8 74:3 90:8,12 90:20,22 94:13</p>	<p>paying 67:18 68:10 77:1</p> <p>payment 37:13 37:13 106:12</p> <p>payroll 19:11 19:16 100:23 100:23</p> <p>penalties 22:6 74:16 109:13</p> <p>penalty 106:4 118:4</p> <p>pennies 38:3 103:19</p> <p>people 5:5 32:5 39:15 50:6 51:25 53:5,6 54:4,14 55:17 57:8,21 58:3 58:21 59:5,20 62:3 63:13 66:12,25 68:1 68:4 71:22 72:5 78:23 80:11 81:10 84:25 86:6 90:4 102:23,25 104:9 109:21 110:18 112:10 112:21 113:4 113:19 114:14 115:21,22,23</p> <p>people's 13:16 13:18 39:13,19 53:15 73:5 75:23 79:4</p>
p			
<p>p 2:1</p> <p>p.3d 34:22 42:17</p> <p>pac 11:16 34:22</p> <p>package 53:16</p> <p>page 118:8</p> <p>pages 16:6 81:9 110:19 118:5</p>			

[people's - plaintiffs]

82:22 percent 37:25 43:16 51:18,22 51:25 53:8,9 53:18 66:1,4 73:25 108:4 109:24 110:1 perfect 88:21 perform 103:22 performing 84:19 periodically 75:9 perjury 118:4 permit 107:24 permits 49:3 66:15,24 permitted 42:11 permitting 83:24 perpetuity 84:24 person 100:16 100:16 102:2 113:22 person's 103:8 personal 37:9 37:17 38:11 41:1,7,12,14 75:3 102:13,15 personality 55:1 personally 41:8	persons 8:23 perspective 52:4,9 67:16 persuade 77:2 pertaining 17:7 18:13 39:9 42:13 pertains 108:10 pervade 107:21 107:23 peti 67:20 petition 11:22 12:7 18:11 20:5,19 21:15 22:1,1,3,5,7,10 22:23 23:16,16 25:5 26:6,22 33:7 39:12 40:1 42:7 44:11,14 50:13 62:22 81:12 91:2 92:13 93:16 98:2,15 98:23,25 99:4 99:11,20 100:1 100:4 101:9,23 105:17 106:22 107:8 109:12 109:18 110:16 114:15 petition's 11:8 35:8 38:19 39:3,6,21 petitioner 101:10 107:7	107:18 petitioners 8:22 24:2 25:25 27:19 33:5 34:16 46:2,13 48:7 107:2,2,12 petitions 6:1,4 6:21 8:16,21 10:8 13:5,13 14:4 16:10 17:4,5,9,11,15 17:17,25 18:1 18:3,5,7,16,17 18:19 19:19 20:17 21:11 22:14 23:24 24:7,21 25:1,7 25:8 26:15,24 27:3,15,24 29:16,18 30:6 31:10 35:10 39:11 41:18 42:3,4,7,21 43:11,16,21,23 43:25 44:3 62:22 97:5 99:14 100:15 100:18 101:24 102:5 pew 51:11 ph 3:21 25:1 56:18 phenomenon 55:6	phrase 56:9,10 physical 18:6 26:23 27:1,6 27:11,20,22,23 27:25 28:2,3,4 28:5,6,9,11,16 29:1,9,12,25 30:2,5,12,19 31:13,25 32:3 32:14,24 78:4 111:15 115:4,5 115:7,8,9,14,15 115:18,19,24 piece 98:8 110:11 pistol 56:18 pit 80:18 place 53:23 54:22 62:23 102:18,24 113:8 115:21 115:22 placing 44:2 111:1 112:3 plain 99:17 plaintiff 3:17 5:7,9 37:9 plaintiff's 10:25 37:12 38:1,11 58:24 111:19 plaintiff.press. 2:14 plaintiffs 2:16 3:3,19 4:7,17
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[plaintiffs - prevented]

<p>4:18 6:18 9:15 37:19 47:7 48:24 52:5,13 54:10 72:15 78:11 82:16 86:22 102:13 105:13,14 111:9 112:25 116:4,21 plausible 82:19 83:23 plausibly 53:17 play 63:10 103:21 played 59:12 playing 10:17 63:22 plays 87:6 please 2:2 point 11:1 14:22 21:20 28:6,10 32:20 32:25 59:3 61:17 62:17 68:23 71:11 72:11,13 80:16 99:19,23 102:11 104:1 105:21 106:16 107:10 108:5 pointed 7:1 62:12 points 9:16 49:10,12 68:13 96:4,25</p>	<p>police 78:15 policies 88:18 policy 35:1 37:20 92:3 political 13:2 71:22 politically 97:24 politicians 58:6 politics 59:3 71:20 poor 55:14,16 popular 20:2 33:4,8 63:1,5,6 63:13 97:24 98:3 population 90:4 portion 68:13 75:6 76:3 portions 67:20 82:1 portrayal 91:22 position 16:9 37:6 positive 115:4 possible 72:10 possibly 75:16 82:18 potential 15:6 17:9 22:8 37:11 41:10 102:23 103:12 106:14</p>	<p>potentially 40:19 98:3 poverty 54:14 power 103:2 111:5 powers 50:9 80:11 practice 42:22 43:1 practices 35:24 36:10 42:24 43:1 44:22,24 45:11 46:2 53:14 73:3 106:25 pre 59:12 110:23 preceding 85:14,14 precinct 70:11 precious 86:6 precisely 98:21 precluding 113:9 pred 70:16 predate 55:21 predators 104:7 predatory 4:11 6:3 20:5 21:12 22:25 23:15,20 35:13,16,20 36:9,10,14,17 37:5 38:5,15 39:3,4,7,22</p>	<p>40:2 41:20,21 42:9 44:21 45:25 46:8 48:20 70:16,17 97:10 104:6,8 108:7 preexisting 43:17 preface 62:10 preferred 5:8 33:21 34:3,5 premature 28:8 prematurely 38:2 prepare 116:17 present 3:13 104:25 presentation 50:3 99:7 presented 99:1 presents 22:1 president 34:9 presumed 82:10 presumption 113:4 pretending 27:19 pretty 61:2 72:17 74:20 75:17 prevent 20:1 62:15 71:13 prevented 104:15</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[preventing - provider]

<p>preventing 6:2 20:5 35:4,13 prevents 66:17 previously 58:17 95:1 primaries 60:15 63:6 primary 12:11 12:17 39:23 60:21 64:10 67:10,12 91:14 prior 56:23 pro 9:16 72:19 probably 28:22 59:24 72:7 89:8 114:10 problem 15:9 16:1 31:16 44:23 46:9 47:8 66:1,3 79:6 90:2 92:18 93:13 96:19 97:5 100:3,8 101:14 103:3 problems 13:25 94:25 procedural 49:17 59:14 87:8 88:22 98:21 110:25 111:6 116:8 procedurally 50:12</p>	<p>procedures 64:10 proceed 4:16 108:2 proceeds 37:11 41:10 102:14 103:12 105:1 106:5,9,12 process 7:12,20 7:21 8:3 12:19 33:10 38:12 50:14 58:5,11 61:25 85:1 91:17,18 98:20 98:24 99:2 113:6 product 97:15 products 20:11 20:11 profit 52:14 program 39:23 40:6,7,22 prohibited 23:8 23:9,10,11 72:4 prohibits 74:10 74:24 projects 50:23 prolong 103:23 promote 19:25 promoting 35:4 proper 38:17 property 104:12,14</p>	<p>propes 113:3 proponent 7:10 8:6,15 79:12 proponent's 6:8 proponents 7:18 11:4,17 12:2 13:4 14:1 50:18 72:3 81:23 82:16 93:12,17 94:18 96:13 properts 10:9 proposal 58:25 74:10 88:15 propose 7:13 50:19,20 60:14 80:11 87:14 89:2,4 97:6 117:8 proposed 6:6 8:6 14:25 18:1 35:25 52:2 64:17 73:24 85:13,16 87:16 proposes 20:5 proposing 5:5 7:4 16:3 62:3 69:20 81:1,13 81:15 82:4,6 95:19,20 96:13 97:8 proposition 7:15</p>	<p>prospectively 99:22 protect 7:20 57:17,18 104:10 protected 39:20 53:22 67:8 69:3 98:19 protecting 35:19 62:7 89:3 protection 63:12,15 68:12 73:16 75:1 76:2 86:19 protections 40:16 51:13 53:15 68:16,20 68:21 69:4 70:8,11 104:2 104:5 protects 75:2 prove 68:23 80:16 provi 93:2 provide 18:17 19:17 27:13 79:18 82:6 97:14 100:13 100:21 101:19 106:8 provided 37:8 provider 19:10 19:12,16 29:20</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[provider - really]

<p>100:11,23 105:25 106:7,9 providers 20:10 24:15,15 27:17 31:12 100:9 105:15 provides 17:22 18:15 19:11 20:8,19 25:19 100:24 provision 9:9 10:9 20:14 63:1 74:11,18 74:24 83:15 84:16,16 89:3 91:25 92:13 93:22 94:14 96:2 98:13 provisions 8:8 9:25 10:24 11:8,10 12:23 12:24 13:6 15:21,23 20:2 20:3 36:25 37:2 62:15 63:1 82:14,15 91:10 92:5,17 97:13 public 8:17 pull 50:2 54:13 puny 69:5 purchasing 41:2 purport 10:21</p>	<p>purported 10:20 40:5,6 40:21 purports 93:5 99:22 purpose 19:25 35:3,7 38:22 39:3,23 42:5 44:17,20,21 45:9,25 46:5,7 46:7,11,21,22 47:1,3,5 48:6 61:1,9,20,22 63:25 64:23 65:11 67:12 73:2 92:15,16 94:1 107:6,11 107:14,22,24 purposes 20:22 35:1,15,15 37:4 38:16 62:1 65:16 pursue 51:3 88:18 103:7 pursued 102:12 purview 45:6 50:10 put 3:25 5:6 29:5 37:6 49:20 59:10 62:22 79:16 80:7 81:25 82:2 102:23 110:9 114:15 114:16,19</p>	<p>115:5 putting 81:24 q quality 83:17 question 49:25 65:5 69:15 76:17 90:6 97:2 104:1 109:6 116:9 questions 16:13 33:16,17 48:11 59:18 87:3 96:20 101:25 105:6 108:15 quick 86:3 89:12 quite 14:14 quote 92:11 r r 2:1,24,25 3:8 3:8 raise 21:20 82:10 raised 103:25 112:10 113:2 raises 102:11 raising 40:17 111:23 ranked 51:11 rate 35:25 36:14 37:16,24 40:15 43:6,14 65:8,10 66:19 66:22,22 67:2</p>	<p>68:9 73:22,23 73:25 74:11,14 74:23 79:24,25 93:20 94:12 110:1 112:23 rates 35:19,24 43:3 62:6 65:11,20 67:11 68:7 73:4 86:14 rather 46:8 71:2 92:2 98:14 rating 67:23 reach 11:2 42:5 104:16 reached 12:11 43:2,22 56:25 61:16 read 46:16 109:13 113:18 reader 55:13 reading 82:20 real 27:23 49:24 89:12 110:12 reality 108:7 realize 46:3 really 10:15 24:10,23 25:18 47:4,11 53:4 56:8 66:2 79:7 79:20 94:17,17 104:1 108:14 112:9</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[reason - reiterated]

<p>reason 14:3 32:13 61:10 68:3 75:20 78:18 87:20 88:6 95:10 105:14</p> <p>reasonably 23:15 36:12 37:7</p> <p>reasons 27:3 29:8 98:21</p> <p>rebuttal 89:16 89:17</p> <p>recategorize 106:20</p> <p>recategorized 39:16</p> <p>receive 6:14 37:11 41:9 52:18</p> <p>received 19:5 20:22 103:11 118:7</p> <p>receives 37:13 37:13</p> <p>receiving 41:13 112:22</p> <p>recent 11:16 51:11</p> <p>recess 116:7 117:10</p> <p>recognized 110:16</p> <p>record 2:4 51:14 96:24</p>	<p>recorded 1:9 64:25</p> <p>recording 118:6</p> <p>recourse 23:10 24:17 37:8,15 38:5 39:18 41:7 45:20 48:4 52:20 65:23 103:6,6 103:9</p> <p>recoverability 37:21</p> <p>recovers 37:14</p> <p>redefine 23:18 39:1 100:18 102:25 103:2 106:19 107:7</p> <p>redefining 97:14 103:5</p> <p>redistricting 31:5 77:20 78:19,25</p> <p>reduce 39:2 42:11 43:16,18</p> <p>reduced 39:17</p> <p>refer 19:2 23:17 26:13 29:18 30:10 87:24</p> <p>reference 92:7</p> <p>referenced 101:21</p> <p>referenda 24:25 30:9</p>	<p>referendum 5:6 17:18 24:11,24 25:3,18,25 26:3,5 28:18 30:25 32:25 33:3,6,11 56:1 80:13 81:19,20 81:21,21,23,25 82:4,5 84:4,9 84:15,20,23 85:3,13 97:3,7 97:16,18,24,25 98:6,7,9,12 115:2</p> <p>referendums 84:22 113:8</p> <p>referred 23:15 27:25</p> <p>refers 22:25 25:17 100:7</p> <p>reflects 37:16</p> <p>refund 9:4 45:4 45:13</p> <p>refused 61:16</p> <p>refute 49:24</p> <p>regard 24:5,5 101:14,15</p> <p>regarding 56:20 73:21 75:1 106:8 109:13 118:7</p> <p>regardless 40:5 40:23</p> <p>regime 101:7</p>	<p>registered 94:2 94:3,8,10</p> <p>registration 61:5</p> <p>regularly 19:5</p> <p>regulate 27:9 27:11</p> <p>regulated 38:14 42:10</p> <p>regulating 8:17 29:13 31:13 90:21,21,22,24 93:5</p> <p>regulation 79:10,18</p> <p>regulations 39:7</p> <p>regulators 31:20</p> <p>regulatory 27:16,21 37:1 93:25 101:7</p> <p>reisman 2:22 2:23,24,25 3:2 33:23,25 34:2 34:3,20,24 86:11 102:3,3 105:9 108:22 108:25 109:24 116:22 117:5,9 117:11</p> <p>reiterate 22:13 51:8</p> <p>reiterated 71:25</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[reject - right]

<p>reject 6:19 rejecting 116:5 relate 11:9 13:7 92:5,17 related 12:24 12:25 21:14 32:9 38:19,21 41:16 45:25 61:21 64:24 67:20,25 91:25 92:2,14 relates 32:23 76:2 relating 21:15 relative 24:22 25:10,19 relied 107:16 relief 13:11 39:24 40:7,14 40:22 41:17,21 41:22 46:7,9 46:15,22 47:3 91:5 92:7 107:13,23 relieve 40:19 rely 11:18,18 34:14 relying 23:11 remainder 15:22 remedy 24:4,6 remember 89:15 112:7 113:17</p>	<p>render 61:16 107:25 rent 40:16 93:7 repaid 106:9 repairs 102:21 repay 63:16 repeal 26:15 96:14 97:8 98:7,10,13,18 repealed 83:5,5 83:5 95:8 114:23 repealing 15:21 65:18 95:21 97:13,25 reply 30:11 report 106:1,7 represent 2:10 representatives 31:4 representing 3:3 5:20 34:7 republican 97:20 require 11:8 31:4,19 32:14 78:22 91:24 98:7 required 15:20 72:4 98:5,14 99:5 111:14,16 113:25,25 requirement 6:24 7:19 8:2</p>	<p>9:25 15:11 16:11 26:9 38:17 41:19 43:25 44:12,15 46:25 47:6 64:20,20 95:5 96:9,17 requirements 6:21 7:2 9:13 34:17 35:2,3 43:24 49:17 59:15 88:23 110:25 111:6 requires 16:2 26:11 115:12 resources 50:24 respect 58:5 95:23 respond 29:8 96:25 response 5:16 13:9 29:3 30:11 32:8 99:9 109:16 responsibility 82:9 responsible 3:4 34:4 rest 108:13 113:13 restarting 50:14 restrictions 100:19</p>	<p>result 26:24 41:2 43:22 retail 9:6 90:24 96:7 revealed 86:11 revenue 32:14 reverses 114:8 review 26:22 reviewed 4:19 revised 35:11 rewriting 60:9 rich 54:4 ries 2:24 right 7:13,14 9:4 16:15 25:3 25:5,15 37:11 41:9 48:22 49:8,19 50:16 51:2 52:14,17 52:25 53:20 56:5,22 57:9 57:15,20 58:2 60:19 63:20 68:2,6,25 70:8 70:10,23,25 71:1 72:19 78:2,5,5,10 79:5,17 81:18 82:22 84:8 86:7,15 87:5 87:20 88:11,21 89:21 90:8 92:25 98:17 103:11 105:3 109:4,7,25</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[right - section]

110:19 rights 87:11 104:25 rise 54:9 risk 33:2 97:23 risks 37:17 road 99:25 role 58:24 rolling 62:17 62:20,21,24,24 63:8,20 90:16 rolls 6:25 rooftops 59:8 110:18 room 50:3 routinely 28:13 29:5 31:25 rubric 62:9 rule 17:5,24 22:14 40:23 56:12,23 86:20 101:13 111:10 112:19 114:9 rules 51:5,6 61:3 98:21 ruling 61:16 run 25:25 26:3 26:5 97:3,7,16 98:12 runner 57:19 running 33:3 53:24 97:5,18 97:23 russell's 81:17	s s 2:1 3:2,8 5:12 5:12 6:5 9:23 73:11 75:21,21 75:22,25 87:24 87:24,25 92:24 95:24 105:3 111:21 112:3,3 112:20 113:13 116:3,3,5 s1 39:12 s3 39:12 40:1 s3-2024 44:11 sacrosanct 98:19 safeguard 7:20 safeguards 99:2 satisfied 41:12 64:25 102:13 satisfies 99:11 satisfy 6:21 34:16 86:25 103:8 save 61:5 saves 38:4 savings 39:13 39:19 73:5 75:3,23 saying 25:13 34:21 80:8 81:4 101:10 105:18 says 11:14 24:13 30:16	31:11,17,25 46:18,18 47:14 50:1,24 55:14 58:18 62:19 75:1 78:4 81:12 91:8 92:10,11,19 95:6 96:10 97:4 98:8,11 99:11 100:5 103:14 105:24 107:16 109:8 109:24 sb 65:18 82:17 82:25 83:12,13 83:23 86:3,6 98:10 105:22 105:24 106:15 108:9,13,14 scale 69:3 scheduled 19:5 scheme 64:21 schrager 2:16 2:20 4:6,9,9,10 7:16 11:20,25 48:15,16,17,17 55:24 56:3,7 56:11,17 69:16 69:19 70:1,5,7 70:19,21 71:10 71:12 73:12,14 73:20 76:1,5,8 76:12,15 78:5 85:9,11 87:15 87:23 88:1,4	89:1,5,10,25 91:8 92:19 93:2 95:6 97:1 97:4 98:17,22 99:6,19,22 105:11 106:13 108:3,16,18 116:2,8,11,15 116:18,19 117:2 schrager's 7:11 105:17 106:19 schuller 34:9 scope 114:12 scopes 92:19 score 23:12 106:2 seated 2:2 sec 19:21 second 6:13,15 8:13 19:22 42:13 44:12 65:4,9 66:3 88:2 secretary 4:15 112:2 114:1 section 7:2 8:24 9:3,8,23 10:8 10:24 20:16,19 23:13,17 25:7 25:17 27:4 29:22 50:10 64:16 66:14 71:9 77:22 80:8 82:21
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[section - signers]

<p>92:23,25 93:12 93:14,14 94:14 94:15 95:23 96:5 98:9 99:20,21,25 100:3,8,16 101:3 105:21 105:24 108:10 108:10,11 111:22 sections 9:19 64:5,8 68:15 81:24 113:12 security 15:3 68:17 71:1 see 3:22 5:24 7:17 44:17 54:24 55:5 66:2,13 75:19 85:21 86:1 116:24 seeking 24:24 27:13 104:7 seeks 39:12 seemed 48:20 seems 6:10 110:6 seen 115:25 seizure 75:7 select 10:4 self 68:19 sell 8:16 38:2 54:10 seminar 72:19</p>	<p>senate 17:20 18:2,20,24 19:7 20:7,15 20:25 21:16 23:8,13 24:6 24:11,13,24 25:16,24,25 26:16,21 27:2 27:4 30:4 31:11 32:11,12 33:9 97:3,7,13 99:21,24,25 100:3,5,10 sense 109:23 sentence 75:25 90:14 separate 8:10 10:19 12:10 61:25 70:4 75:20 91:10,15 94:16 112:11 septe 85:16 serve 35:3 38:22 39:2 66:5 104:5,6 service 18:25 19:9,12,16,18 20:7,10 21:9 21:13,16,21 24:14,15 27:14 27:17 29:19 31:12 99:16 100:13,21,23 101:5,20 105:15,25</p>	<p>services 17:21 17:21 19:1,1,2 19:6,8 20:9 21:1,23 22:15 23:4,7,14,18,20 24:5,9,14,22 25:9,11,15,19 25:20,22 26:7 26:18,19 27:8 27:10 29:13 32:19 45:16,17 45:21 47:23 48:1 52:6 54:5 59:5 98:11 101:15,16 105:19 106:16 107:3 108:12 session 17:19 18:22 49:20 50:17 set 18:2 59:24 60:1 73:24 111:16 sets 48:10 105:22 settle 103:18,19 sev 2:11 seven 116:19 seventy 51:22 shaded 73:8 share 16:23 shield 39:13 shielding 39:14 shields 73:4 75:23</p>	<p>shift 100:25 shocked 66:13 short 22:22 50:20 72:23 should've 76:19,19 79:16 116:16 shout 59:8 110:18 show 16:7 27:23 49:14,16 75:24 81:9 96:2,17 100:24 showed 95:25 96:1,15 showing 15:25 shows 52:14 sic 34:13 side 55:7,10 83:6,6 111:19 111:20 sided 79:15 sig 11:17 sign 81:10 103:17 114:15 signatories 42:6 99:12,15 signature 118:16 signatures 85:15,18 signed 26:2 32:21 97:21 signers 15:7</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[significant - state]

<p>significant 14:15 27:6 67:8 significantly 11:18 94:8 sihomara 44:6 105:10 similarly 35:22 47:7 simple 26:9 81:15 simply 13:23 15:10 19:3 31:6 46:25 67:1 83:23 86:19 94:23 100:13,24 107:7 110:8 sin 6:11 111:10 single 6:11,23 6:25 7:6 8:2 9:25 11:3 12:4 12:7,14 14:10 14:17 15:11 16:11 17:4 18:10,16 19:24 19:24 22:14,18 35:2,6 38:16 40:22 41:18 43:25 44:12,15 46:25 47:6,9 51:5,16,20 56:12,20 60:1 61:14 62:11,14 64:15,24 66:2</p>	<p>77:12 81:8 86:16,20 91:4 91:20 92:22 93:11 94:25 99:11 101:13 107:8 108:1 111:7,10 112:18 113:15 114:8 singles 6:14 singularly 40:3 86:14,15 105:4 105:5 sir 4:22 69:16 76:11 sit 2:19 sitting 4:25 situation 69:24 72:15 79:2 six 54:25 61:14 61:16 sky 59:9 sliding 69:3 slow 37:19 55:5 small 104:11 smoking 28:18 31:18 112:5 smuggling 62:25 social 15:3 68:17 71:1 sold 69:21 somebody 52:18 80:5,6</p>	<p>someone's 104:16 sorry 34:20 47:18 86:18 89:11 90:23 105:23 116:16 sort 49:5 51:9 54:24 57:1 59:19 60:5 61:11 64:2 66:7 69:2 70:22 71:14,20 72:14 79:14 81:7,22 85:7 87:3 93:9 108:25 109:2 117:3 sorts 55:22 sound 4:2 sounds 51:14 space 72:3 75:13 76:18 speaks 110:16 species 85:25 specific 32:11 62:13 63:21 specifically 27:4 76:21 91:21 96:10 speculation 83:11 speculative 83:9,18 spend 32:7</p>	<p>spent 112:11 113:25 114:5 spin 93:21 spiral 53:11 68:11 split 63:18 sponsor 12:13 sponsored 97:22 st 4:13,13 staff 28:22 staffing 78:22 stake 60:7 stakeholders 88:13 stand 52:8 57:10 72:23 standard 18:16 22:11 24:19 33:8 99:12 standards 34:11 start 5:18 65:2 77:14 88:8 started 55:23 89:25 105:11 115:23 starting 2:8 state 4:15 8:3 10:13,15,18 27:9 31:15,24 35:17,21,22 52:10 53:7 55:10 61:11 66:18,19 74:14</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[state - substantive]

<p>74:23 83:19 94:2,6,8 95:15 112:3 114:1 state's 15:1 66:19 stated 39:3 44:17,20,21 45:25 46:4,6 46:11,21 47:3 47:5 48:6 107:11,24 statement 57:2 62:19 67:12 70:18 72:11,17 72:24 73:1,21 74:9 79:13 108:20 statements 74:7 108:17 states 20:8,25 35:11 36:21 45:10 47:25 48:7 66:15 101:12 statute 25:6,10 25:12,13,14 37:23 38:7 45:18 58:18 84:10 85:5 94:1 95:12 96:9,10,12 97:9 111:17,25 112:9 statutes 15:19 15:21 18:5</p>	<p>28:21 29:6 31:12 32:3,4 35:12 57:23 68:21,22 81:5 81:6 83:6,8 88:24 95:8,18 95:21,22 statutory 7:19 37:1 49:18 80:12 82:14 84:19 85:6,16 95:20 111:4 stems 47:8 step 103:16 stick 107:11 stipulated 5:16 stomach 80:18 stood 105:18 stop 2:20 4:11 48:20 82:16 straight 64:3 straightforward 22:20 24:20 26:10 67:18 71:16 91:8 strategy 6:9 stray 49:10 streets 55:6 stress 65:17 strict 99:5 strike 89:8 strikes 63:13 strip 55:8 strongly 32:18</p>	<p>struck 84:24 structure 93:25 structuring 74:12 student 13:15 41:4 study 51:11 52:2 stuff 78:24 sub 36:21 subject 6:11,23 6:25 7:6,7,8 8:2 9:25 10:19 11:3,12 12:4,7 12:14,25 14:10 14:17 15:11 16:11 17:5,6 18:10,12,16 19:24,25 20:11 20:12 22:14,18 32:12 35:2,6,8 36:5,5,24 37:1 38:17,20,20 40:5,6,9,21,23 41:16,18,23 42:7,12,13 43:25 44:12,15 46:25 47:6,9 48:5 51:5 56:12,21 60:1 61:14 62:1,11 62:14 64:24 65:10 66:3 67:10,12,21 70:4,22 77:12</p>	<p>79:24 81:8 86:17,20 91:20 92:15,16,22 93:11 94:16,25 99:11 100:18 100:22 101:13 102:9,18,20,21 106:14,17,23 107:9,19 108:1 108:2 111:2,8 111:10 112:1 112:18 113:15 114:9 subjects 8:10 9:13 12:10 26:6 40:18 42:8 46:3 60:18 86:23 98:3,15 105:17 107:7 submit 9:24 11:4 90:15 92:21 93:10 97:17 98:5,6 105:13 116:25 117:7 subsection 17:8 18:14,15 21:19 22:11 99:8,10 99:10,17 subsequent 6:5 substantially 76:9 substantive 87:6,9 113:1</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[substantively - textual]

<p>substantively 6:4</p> <p>subsume 68:20</p> <p>subsuming 69:7</p> <p>succinct 22:20 71:16</p> <p>succinctly 74:17 77:7</p> <p>sudden 56:13 101:1</p> <p>suddenly 90:8</p> <p>sued 51:25</p> <p>suffer 54:17 94:24</p> <p>sufficient 18:17 79:8</p> <p>sufficiently 17:9 18:8 19:20 99:12</p> <p>suggestion 89:5</p> <p>summarize 42:3,21,23 43:20 71:24</p> <p>sunset 83:15 108:12</p> <p>super 32:13,17</p> <p>supersedes 95:12 96:11</p> <p>support 13:18 22:24 71:22,23 77:2 98:25</p> <p>supporting 22:3</p>	<p>supports 16:8</p> <p>suppose 2:18</p> <p>supposed 46:21 79:12</p> <p>supposedly 106:25</p> <p>supreme 8:1 11:15,25 12:3 12:20 13:22 40:9 56:2 57:1 58:13 60:12 61:1,11 62:19 77:18 78:7 80:25 81:18 82:2 91:11,16 107:16 112:12 113:6 114:8,13</p> <p>sur 95:12</p> <p>sure 16:21 117:2</p> <p>surpassed 32:17</p> <p>surprise 108:21 108:23</p> <p>surprised 57:5 113:19</p> <p>sustain 38:6</p> <p>swept 101:6</p> <p>switch 6:20</p> <p>system 9:20</p> <hr/> <p style="text-align: center;">t</p> <hr/> <p>table 58:8,8</p> <p>take 16:6 17:11 17:16 18:19 24:17 36:14</p>	<p>38:7 52:10 69:10 70:21 71:1 89:12 96:20 110:10 116:17</p> <p>talk 8:22 52:4 55:18 57:6,14 59:20 72:16</p> <p>talked 57:21 76:20 99:19 109:14</p> <p>talking 5:12 28:19 53:5 70:15 71:5 77:24 78:7 86:12 104:22 110:7 111:22</p> <p>talks 112:21</p> <p>taller 55:1</p> <p>tangible 29:11</p> <p>tape 118:6</p> <p>targeted 49:5 90:1,5</p> <p>task 49:12 57:16,16 76:18 76:25 77:1</p> <p>tax 56:19</p> <p>taxes 37:4</p> <p>taxpayer 42:16 80:19</p> <p>taxpayers 46:23 56:17</p> <p>te 102:20</p> <p>technically 12:15</p>	<p>teed 66:13</p> <p>tell 21:11 22:22 26:3 70:6 79:7 96:14 102:9 103:4</p> <p>telling 15:16</p> <p>tells 44:13 46:10,24</p> <p>tenant 51:19</p> <p>term 55:25 56:5 91:6</p> <p>terms 45:1 59:22 70:1 83:12 92:9</p> <p>test 18:15 44:16 61:20 71:19 102:18 102:20</p> <p>testify 88:11</p> <p>testimony 50:15 98:25</p> <p>text 7:4 16:2 17:23,25 26:9 26:13,13,16 63:23 64:13 80:23 81:13,19 82:3,14 86:8 95:5,5 96:17 100:6,8 111:13 115:3</p> <p>textbook 15:13</p> <p>texts 18:3</p> <p>textual 35:9,10 64:19</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[th - transactions]

<p>th 29:7</p> <p>thank 3:18 5:23 5:25 16:16 29:7 33:18 44:3,10 48:13 48:14 89:10,23 96:21,22 102:2 105:9 108:15 117:12</p> <p>thanks 67:3</p> <p>thereto 17:7 18:13</p> <p>therewith 17:7 18:13</p> <p>thi 39:25 112:16</p> <p>thing 36:5,8 48:22 49:5,19 51:15 52:25 57:11 61:22 63:2 74:21 81:1 82:7 84:22 86:2,10 87:7,7</p> <p>things 14:21 40:13 43:2 46:12 48:10 50:11 51:6 55:2 59:7,10 60:3 61:4,7 68:17 75:12,18 78:24 80:1,7,9 81:9 85:3 88:8 102:23 104:4 109:2 113:5</p>	<p>114:1 115:11 115:11,13,15</p> <p>think 2:6 4:6 6:19 7:21 14:10 15:16 26:8 31:24 46:2 53:17 57:7 59:21 62:9 65:4 67:9 68:3 69:9 75:11,17 80:18 81:5 82:16,24 85:5 90:2,6 91:22 97:1 111:5,7,21,21 111:24,25 112:3,5,6,18,18 112:20,24,24 113:10,11,13 113:16 114:20 114:25 115:3,6 115:7,7,8,13,16 115:18,19,24</p> <p>thinking 5:1 6:9</p> <p>thinks 115:15</p> <p>third 3:3 19:15 74:9 100:9,12 101:3,4 102:4</p> <p>thought 64:15 69:9</p> <p>thousands 21:21 109:21</p> <p>thread 9:12</p>	<p>three 54:23 65:13 73:17 87:22 89:4</p> <p>threshold 68:7</p> <p>thresholds 70:10</p> <p>throw 90:18</p> <p>thumbs 33:12 33:12</p> <p>ties 9:12</p> <p>time 4:3 9:22 49:24 50:2,23 51:24 54:21 55:20 59:24 60:10 67:4 83:2 85:11 96:21 99:7</p> <p>times 52:10 54:19,23 62:16</p> <p>tips 106:6,10</p> <p>title 8:9,22 10:20 43:8 45:4,12 74:3 90:7,13 92:20</p> <p>titled 36:2</p> <p>titles 7:23</p> <p>today 4:21 28:10 34:12 50:3 59:14,17 74:6 89:7 91:6 99:7 105:13,15</p> <p>today's 34:25</p> <p>todd 3:19 89:20</p> <p>together 7:23 9:13 38:22</p>	<p>39:5 91:10</p> <p>told 36:20 42:15 58:1 77:5 94:19</p> <p>took 104:14 112:14</p> <p>top 49:20 60:8 86:5</p> <p>topics 7:24 13:21</p> <p>total 95:5</p> <p>touch 15:12 109:25</p> <p>touched 64:16</p> <p>tourniquets 54:11</p> <p>trading 50:16</p> <p>transaction 20:20 36:23 46:16 58:3 74:5 79:23 100:17</p> <p>transactions 8:14 9:6,7,18 11:3 14:6 20:18 23:1 35:19 43:12 45:23 46:20 57:24 65:7,15 65:19 71:6 74:3,12,15 76:21 79:24 96:8,11 106:20 107:4 109:5</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[transcend - uh]

<p>transcend 16:10 transcriber 118:3 transcript 1:9 transcription 118:6 transparent 6:20 9:24 22:20 treat 37:3 42:10 102:8 treated 25:23 treating 41:21 tremendous 50:23 trial 107:15,17 tried 69:22 71:11 92:6 107:18 tries 15:10 49:22 99:23 trinity 71:15 tripled 28:22 trouble 22:5 troubled 114:21 tru 24:19 true 43:21,21 47:22 51:11 61:8 62:6 67:7 72:9 73:7 74:7 75:4 76:16 93:9 99:25 107:22 108:14</p>	<p>118:5 truthful 24:9 24:20,21 try 68:7 76:10 76:10 91:3 trying 47:11 50:1 54:12 104:10 106:19 turn 4:2 7:5 13:24 38:5 56:8 turns 56:4 two 6:1 7:22 8:7 12:10,15 15:23 19:6 39:10 42:8,9 43:7 49:25 50:5 56:22 57:11 59:13 60:18 61:12,24 63:11 64:1 65:3 66:10,25 67:5,6,10,13 69:12 74:18 75:20 77:18 80:7 83:6,8 85:20 86:3,12 86:13,18 87:14 87:16,19,21 88:6,21 91:9 92:18 110:22 111:5 113:23 115:13,15 type 6:2 18:25 51:16</p>	<p>types 9:9 10:5 14:5 19:6 36:2 43:9 45:5 74:4 110:22</p> <hr/> <p style="text-align: center;">u</p> <hr/> <p>u.s. 56:5 uh 2:7,8,13 3:2 3:9,14,18,20 4:1,10,11,11,13 4:13,17,18,24 5:2,2,4,5,5,6,8 5:9,9,11,15,16 5:17,17,18,20 5:24,25 6:4,6,8 6:9,16,18,20,20 6:23,23,24 7:7 7:8,10,16,24,25 8:1,3,7,9,12,13 8:19 9:1 10:3 10:20,24,25 11:6,18,20,22 11:23 12:13 13:15,16,17,17 14:2,2,12,25 15:1,1,13,18 16:2,8,10,12,12 16:13,17,18,18 16:23,24,25 17:1,3,4,15,16 17:17,21,23,23 17:23,24,24 18:6,8,10,20 19:8,12,21,22 21:18 22:1,15 24:20 26:8,12</p>	<p>26:15,15,25 28:1,4,13,14,18 28:20,21,25,25 29:2,19,19 30:9,11,15,16 30:18,18 31:1 31:2,2,5,14,17 31:18,18 32:25 33:19,20,20,23 34:5,9 36:21 39:10 40:6 47:18 48:2,19 48:20,22 49:3 49:6,6,9,16,20 49:20,20 50:2 50:23,23,25 51:9,10,10 52:7 53:14 54:18 55:21,25 56:7,8,8,9,11 56:14,18 57:4 57:5,5,19 58:12,12 59:4 59:15,22 61:5 61:5 62:2,13 62:20,22 64:2 64:6,7,15,23,24 65:2,6,12 66:6 66:6,8,12 67:8 68:3 69:20,22 70:1,1,1,17,22 70:22,23,24 71:8,9,13,21,24 72:18 73:15,15 73:16 74:19,24</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[uh - unique]

74:25 75:19	107:13 108:22	14:23 15:10	25:7 28:5
76:2,5,15,20,20	109:8,10,15,15	16:15,18,20,22	31:13 35:20
76:22,22,23	109:15,15,15	16:23 17:3,5	37:23 38:14
77:2,9,9,11,13	109:19 110:7	18:11 22:13	40:19 42:2
77:14,21,23	110:15 111:7,8	23:25 26:8,11	49:16 51:10
79:11,11,11,20	111:9,11,15,15	28:3,9 30:11	52:1 57:23
79:21 80:9,12	111:15,18,18	30:13,19 31:2	60:25 61:7
80:12,18 81:7	111:19,21,21	32:10 33:19	62:5 70:1 73:6
81:20,20,21	111:21,22,22	44:7 46:23	92:6 98:9
82:21 83:13,23	111:22,23	56:18 61:5	100:10,16
83:23,25 84:2	112:2,2,4,4,10	64:3,7 73:8,12	101:2,6 106:17
84:2,2,5,10,20	112:16,17,20	80:9,24 82:9	108:2 109:24
85:13,16,21,22	112:21,21,21	84:5,7 86:9,22	111:3 118:4
85:24 86:2,2	112:24,24,24	88:12 97:6	underbidding
86:11 87:8,11	112:24 113:1,2	99:18,24	51:10
87:15,19,22	113:5,7,8,8,11	107:17 108:18	underlying
88:4 89:3,3,10	113:12,13,14	110:22 111:6,6	113:5
89:15,16,18,18	113:14,16,21	111:12,14,14	understand
89:24 90:3,3,4	113:22,24	112:9 113:3,15	5:10 14:1 16:4
90:12,18,19,19	114:2,3,8,10,11	113:21 114:21	26:14,17,20
90:21,22,23,23	114:12,12,16	116:3,16 117:4	27:5 75:9
90:24 91:4,14	114:17,17,17	117:7	77:25 78:6
91:23 93:4,5,9	114:18,20,23	umbrella 40:20	94:18 95:13
93:15,24 94:12	114:25 115:2,3	unable 36:12	109:15,17
94:20 95:4,5,8	115:7,12,12,14	37:7	understood
95:9,12,12,17	115:16,16,24	unanimously	14:14 72:2
96:5,23,25	115:25 116:2,2	97:19	undertake 83:8
97:1,4,6 98:16	116:4,5,11,11	undependable	undertakes
98:16 99:18	116:24	37:18	60:1 62:14
100:5,23	ultimate 12:20	under 8:9,16	unfunded
101:17 102:4	ultimately	8:17 10:5 12:4	77:15,21 79:15
102:21 103:11	12:21,22 13:2	15:3 17:8 19:6	80:21
103:12 104:17	um 3:8 4:16	19:21,22 20:18	union 9:11
104:18,19	5:11,16 6:14	20:25 21:16	unique 72:15
105:16 107:3	7:5 9:5,15 10:7	23:5,7,15,17,21	

[universal - wage]

<p>universal 40:18 unlawful 35:19 109:18 unlevel 10:17 unmistakable 55:6 unpaid 74:1 unpopular 20:1 62:25 109:18 unrelated 8:15 11:11 26:7 62:15 unscrupulous 36:10 unsurprising 58:23 upheld 77:17 77:18 91:21 112:13 urge 6:18 7:11 59:21 urging 71:22 use 66:22 67:2 90:17 91:4 105:25 used 41:2 101:20 114:6 user 23:11 24:17 106:8,12 user's 23:12 105:25 106:2,2 users 21:25 22:2 uses 84:6</p>	<p>using 33:10,11 54:4 68:6 usual 50:10 116:15 utterly 64:9</p> <hr/> <p style="text-align: center;">v</p> <hr/> <p>v 1:11 3:13 118:20 value 38:1 various 46:3 47:11 65:6 105:16 107:7 vast 27:20 71:6 102:22 vastly 27:15 vegas 42:15,16 46:23 56:17 verify 19:12 21:7 100:13 versions 72:8 versus 5:4 11:16 34:18,21 42:16 vessels 57:7 veteran's 15:4 vetting 98:23 video 1:9 violate 7:2 22:14 41:18 43:23 74:14,15 86:16,20 101:13,24 violated 86:7 114:9</p>	<p>violates 40:22 43:25 44:12,15 111:10 112:18 violating 17:4 violation 6:11 6:15 7:1 9:24 18:9 47:9 61:14 77:21 82:3 92:22 93:11 96:16 107:9 violations 6:23 virginia 66:20 virtually 47:1 107:21 virtue 86:19 95:8 voice 5:24 voids 74:15 voluntary 106:5,10 vote 32:13 40:10 65:15 84:15,25 113:4 113:22 voter 17:10,14 21:11 22:8,22 22:23 23:19 24:13 26:13,17 26:20 35:4 47:12,19,24 99:1 100:5 voter's 25:3,5 90:17</p>	<p>voters 10:15 11:16 13:3 14:24 15:25 16:7 26:4 34:22 40:10 41:23 62:2 77:2,5 82:2,7 82:10 94:16,19 95:13 96:1,3 96:15,17 98:17 102:9 103:2,4 103:4 votes 92:3 voting 40:11,12 60:17,21,23 61:4 63:7</p> <hr/> <p style="text-align: center;">w</p> <hr/> <p>wage 17:20 19:1,9 20:8,9 20:10,17 21:23 21:25 22:15,15 23:7,10,14 24:5,9,14,22 25:9,10,14,20 26:7,17,19 27:7,10,16 29:13 31:11 32:19 40:17 45:15,17,21 47:22 48:1 52:24 53:1 59:7 76:20,24 98:11 99:15 100:1,11 101:14,16</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

[wage - years]

<p>105:19,25 106:16 107:3 108:12 109:22 wages 19:19 20:21 21:2,8 70:25 75:4 100:14 102:16 103:8 104:11 want 3:24 4:16 10:16 25:25 27:5 48:22 49:1,18 55:18 57:14,20 59:3 62:17,17 65:17 77:6,9 86:24 92:11 93:17,20 93:21 94:17 95:3 96:20 97:16 98:10,16 105:21 107:2 108:17 110:11 116:2 wanted 2:19 82:1 86:3 wants 4:17,18 16:19 33:22 45:10 49:4 63:10 102:17 washington 61:12 wasting 67:3 waters 54:8 way 7:13 13:13 14:6,13 15:10 26:20 39:8</p>	<p>48:5 52:7 56:19 83:23 87:17 90:9,15 91:3 93:19 95:14,15 103:16 104:4 109:5 110:6,8 ways 56:24 we've 4:20 5:2 7:1 13:7 26:25 49:17 52:4,4 57:22 68:19,24 68:25 75:17 80:8 90:12,14 99:16 109:14 111:7 week 69:2 116:23 weeks 61:12 weight 55:19 welcome 86:4 wellbeing 13:11,16,19 went 56:21 69:22 70:9 89:16 west 66:20 what'd 70:16 whichever 85:21 whittled 12:18 wholesale 15:24 wild 66:11</p>	<p>willing 52:19 window 50:20 wins 80:13 wiped 64:9 wiping 79:21 wisdom 58:24 wo 30:23 won 51:22 word 14:2 62:16 84:6 words 14:7,9 14:16,20 17:25 23:1 47:10 72:7 75:17 110:10,10,11 110:11 work 38:22 39:5 78:14 79:6 100:12 115:22 116:25 worked 19:4 100:24 worker 19:3,13 19:18 20:20 21:2 100:14,24 workers 101:20 workload 28:25 32:6 worried 97:18 102:12 worth 51:24 81:9 would've 72:12 72:14 74:2 95:8 114:2</p>	<p>wound 54:17 wrapped 20:2 writ 63:11 write 111:20 116:2,5 writer 60:23 writs 6:7,7 8:10 8:11 10:1,1 15:2,2,2 93:1 written 38:8,9 117:7 wrong 110:19</p> <hr/> <p style="text-align: center;">x</p> <hr/> <p>x 69:10 70:25 xxx 84:6</p> <hr/> <p style="text-align: center;">y</p> <hr/> <p>y 3:13 yeah 2:5,21 29:17 31:8 56:10 67:1 68:13 70:19,20 76:8 78:14 86:1 89:5,22 95:6 108:22,24 116:14 year 10:11 27:11 31:15 54:19,23 85:14 85:18 114:7 years 7:9 10:16 28:19 54:19 57:2,11 83:12 83:14,14,15,20 83:21 93:22,25</p>
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[years - zoom]

94:7,23 99:24 113:23 115:10 yell 86:5 yelled 112:14
z
zero 28:16 29:5 31:17,21 78:4 115:6 zoom 3:23

April 15, 2024

Date

WILLIAM SCOTT HOEN
CLERK

By [Signature] Deputy

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

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

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.

Lead Case No. 24-OC-00021B

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.

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 0023 1B & FILE
Dept. No.: I

2024 APR 23

WILLIAM HORN
CLERK

BY  CLERK

FILED IN ERROR

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

**PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER
GRANTING PLAINTIFFS' LEGAL
CHALLENGES TO INITIATIVE
PETITION S-01-2024**

This matter came before this Court following four complaints, filed by four different sets of plaintiffs, challenging the legal sufficiency and procedural defects of Initiative Petition S-01-2024 (the "Petition"), under NRS 295.061. Intervenor-Defendant Kate Feldman ("Ms. Feldman") filed the Petition on January 5, 2024, with Defendant Nevada Secretary of State (the "Secretary"). On March 22, 2024, the Court held a hearing on the several challenges to the Petition. The Court, having reviewed the papers and pleadings on file, having considered the oral arguments presented by the parties, and being fully advised and good cause appearing, finds, concludes, and orders as follows:

1 FINDINGS OF FACT AND CONCLUSIONS OF LAW

2 A. FINDINGS OF FACT

3 1. Initiative Petition S-01-2024

4 Ms. Feldman filed the Petition with the Secretary on January 5, 2024. The Petition proposes
5 to amend the Nevada Revised Statutes to include a new chapter 604D entitled the "Preventing
6 Predatory Payday and Other Loans Act." Ms. Feldman later filed a second Initiative Petition, S-03-
7 2024, on January 24, 2024, which proposes to enact the same "Preventing Predatory Payday and
8 Other Loans Act," but omits provisions included in the first Petition, S-01-2024. This Order
9 addresses only the first Petition.

10 The first Petition's Description of Effect, which is required under NRS 295.009(1)(b),
11 states as follows:

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

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

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

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

The Petition consists of 18 Sections and nearly 18 pages of new text to be added to the
Nevada Revised Statutes, as well as proposed deletions of, and amendments to, existing statutes.
The existing statutes that the Petition proposes to amend or delete relate to numerous other
statutory chapters that address topics including deferred deposit loans, high-interest loans, retail
installment transactions, banking, writs of execution, garnishment, property exempt from

1 judgment collection, and other matters. Generally, the Petition's "loan"-related provisions and
2 related penalties against "payday lender[s] or other person[s]" are proposed in Sections 1 through
3 16. The wage garnishment provisions of the proposed "Preventing Predatory Payday and Other
4 Loans Act" are set forth in Sections 17 through 18.

5 The Petition's proposed Act, at Section 5(1)-(2), defines the term "Loan" to include a
6 variety of financial transactions involving money or credit provided to a consumer, as follows:

7 **Loan defined.**

8 ***1. For purposes of this chapter, "loan" means and includes:***

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

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

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

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

The Petition, at Section 9, proposes a "maximum interest rate" of 36% per year to apply to
"any loan or other transaction subject to" the proposed Act. In Sections 10 through 13, the Petition
proposes various penalties for exceeding the proposed maximum rate or otherwise violating the
provisions of the proposed Act. The Petition, at Section 14, also would constitute a declaration for
the State of Nevada to "opt out" of the federal "Depository Institutions Deregulation and Monetary
Control Act of 1980," Pub. L. 96-221, or "DIDMCA." The Petition further proposes, at Section

1 15, a prospective application of Section 9’s maximum interest rate, purporting to apply the
2 maximum rate to “entities licensed...to provide earned wage access services,” as defined in Senate
3 Bill 290 (Nev. Leg. 2023), beginning on January 1, 2030.

4 In addition to its various “payday loan”-related provisions and civil penalties, the Petition’s
5 Section 17 proposes to eliminate NRS 21.105(1)(a)-(n), which exempts certain sources of income
6 of a judgment debtor from garnishment, up to \$2,000. This Section of the Petition also eliminates
7 existing statutory categories of sources of income that NRS 21.105(1)(a)-(n) protects from
8 garnishment, and instead proposes a single, greater amount of \$5,000 that is not subject to
9 execution. The Petition also revises and restricts existing provisions under NRS 21.105(6) that
10 afford immunity for financial institutions that make a commercially reasonable effort to determine
11 whether money in a judgment debtor’s account is exempt from execution.

12 Finally, Section 18 of the Petition proposes to amend NRS 21.090(1)(g), which exempts
13 from execution certain amounts of a judgment debtor’s disposable earnings for any workweek, on
14 a sliding scale depending on the amount the judgment debtor earns during that period. The Petition
15 eliminates NRS 21.090(1)(g)’s existing protections and replaces them with higher thresholds, such
16 that more of a judgment debtor’s disposable earnings would be exempt from garnishment. The
17 Petition also redefines NRS 21.090(1)(g)(2)’s definition of “earnings” to specify that
18 “[c]ompensation paid or payable for personal services is earnings regardless of whether the
19 judgment debtor is classified as an independent contractor or an employee.” Finally, the Petition
20 proposes to adjust its revised exemption amounts for inflation pursuant to the Consumer Price
21 Index, and directs the Nevada Department of Business and Industry to publish the annual
22 adjustment each year, “round[ing] up” each annual adjustment “to the next \$10.”

23 **2. Procedural History**

24 On January 26, 2024, Plaintiffs Nevadans For Financial Choice and Christina Bauer
25 (collectively, “Nevadans for Financial Choice” or “NFFC”) filed a Complaint for Declaratory and
26 Injunctive Relief challenging the legal sufficiency of Initiative Petition S-01-2024, pursuant to
27 NRS 295.061, and submitted a Brief in Support of the Complaint. Subsequently, on February 14,
28

1 NFFC filed a First Amended Complaint timely adding Initiative Petition S-03-2024 to their
2 challenge.

3 On January 29, 2024, Plaintiff DailyPay, Inc. (“DailyPay”) filed a Complaint for
4 Declaratory and Injunctive Relief challenging the legal sufficiency of both Initiative Petition S-
5 01-2024 and Initiative Petition S-03-2024, pursuant to NRS 295.061.

6 On January 29, 2024, Plaintiffs Preferred Capital Funding - Nevada, LLC and Alliance For
7 Responsible Consumer Legal Funding (collectively, “Preferred Capital”) filed a Complaint for
8 Declaratory and Injunctive Relief challenging the legal sufficiency of both Initiative Petition S-
9 01-2024 and Initiative Petition S-03-2024, pursuant to NRS 295.061.

10 On February 13, 2024, Plaintiffs ActiveHours, Inc. and Stacy Press (collectively,
11 “ActiveHours”) filed a Complaint for Declaratory and Injunctive Relief challenging the legal
12 sufficiency of Initiative Petition S-03-2024, pursuant to NRS 295.061.

13 On or about February 22, 2024, the parties stipulated to, and the Court ordered, that the
14 filed suits be consolidated into one action to make the matter more efficient in terms of judicial
15 economy, the intervention of Ms. Feldman and Stop Predatory Lending NV, a Nevada nonprofit
16 corporation, as appropriate, and a briefing schedule. Ms. Feldman and Stop Predatory Lending NV
17 are collectively referred to herein as the “Proponents.” After briefing, the Court held hearing on
18 the consolidated matters on March 22, 2024.

19 **B. CONCLUSIONS OF LAW**

20 **The Petition Violates Nevada’s Single-Subject Rule.**

21 NRS 295.009(1) provides that “[e]ach petition for initiative or referendum must...
22 [e]mbrace but one subject and matters necessarily connected therewith and pertaining thereto.”
23 NRS 295.009(2) further provides that an initiative “embraces but one subject and matters
24 necessarily connected therewith and pertaining thereto, if the parts of the proposed initiative... are
25 functionally related and germane to each other in a way that provides sufficient notice of the
26 general subject of, and of the interests likely to be affected by, the proposed initiative[.]” NRS
27 295.009(2). NRS 295.061 authorizes a challenge to a proposed initiative when it violates the
28 single-subject rule set forth in NRS 295.009(1)-(2). Specifically, “whether an initiative or

1 referendum embraces but one subject and matters necessarily connected therewith and pertaining
2 thereto...may be challenged by filing a complaint in the First Judicial District Court.” NRS
3 295.061(1).

4 Nevada’s single-subject requirement “facilitates the initiative process by preventing
5 petition drafters from circulating confusing petitions that address multiple subjects.” *Nevadans for*
6 *the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d 1235, 1240 (2006). Thus,
7 “the single-subject requirement helps both in promoting informed decisions and in preventing the
8 enactment of unpopular provisions by attaching them to more attractive proposals or concealing
9 them in lengthy, complex initiatives (*i.e.*, logrolling).” *Las Vegas Taxpayer Accountability Comtee.*
10 *v. City Council of City of Las Vegas*, 125 Nev. 165, 176-77, 208 P.3d 429, 436-37 (2009). After
11 all, unlike other “means of enacting law, the initiative process typically does not allow for unput
12 in drafting proposed laws.” *Id.*, 125 Nev. at 177 n. 6, 208 P.3d at 437 n.6 (citation omitted).

13 When considering a single-subject challenge, this Court must first determine the initiative’s
14 purpose or subject, “and then determine if each provision is functionally related and germane to
15 each other and the initiative’s purpose or subject.” *Helton v. Nev. Voters First PAC*, 138 Nev. Adv.
16 Op. 45, 512, P.3d 309, 314 (2022). “To determine the initiative’s purpose or subject, this court
17 looks to its textual language and the proponents’ arguments.” *Las Vegas Taxpayer*, 125 Nev. at
18 180, 208 P.3d at 439. Courts also will look at whether the description of effect articulates an
19 overarching purpose and explains how provisions relate to a single subject. *Id.* The proponents of
20 an initiative “may not circumvent the single-subject rule by phrasing the proposed law’s purpose
21 or object in terms of ‘excessive generality,’” nor “‘join[] disparate provisions which appear
22 germane only to topics of excessive generality[.]’” *Id.* (quoting *Harbor v. Deukmejian*, 240
23 Cal.Rptr. 569, 742 P.2d 1290, 1303 (1987)).

24 The Petition violates Nevada’s single-subject rule in several respects. First, by its own
25 description, the Petition embraces at least two disparate subjects in purporting to “establish[]
26 maximum interest rates charged to consumers, and shield[] more of people’s savings and earnings
27 from garnishment than under current law.” The Petition’s proposed changes to NRS Chapter 21,
28 which contains Nevada’s statutes on garnishment, execution, and exemptions from judgments.

1 have no nexus to the Petition's other putative purpose of imposing maximum interest rates on
2 "loans" and other transactions. Imposing a maximum interest rate on lenders and others is not
3 "functionally related and germane to" shielding a judgment debtor's savings and earnings from
4 garnishment. Nor is shielding a judgment debtor's savings from garnishment a matter that is
5 "necessarily connected" with and pertaining to "Preventing Predatory Payday and Other Loans."
6 The shielding of debtor assets in the collection of judgments applies beyond those arising out of
7 the proposed "Preventing Predatory Payday and Other Loans Act." By the Petition's own text, it
8 is clear that the Proponents have improperly joined multiple discrete and disparate subjects
9 together into a single Petition, in violation of NRS 295.009's single-subject rule.

10 Second, the Proponents' arguments in favor of the Petition demonstrate that the Petition
11 embraces more than a single subject, even when including matters necessarily connected therewith
12 and pertaining thereto. In their Omnibus Response Brief, Proponents argue that the common policy
13 goal behind the Petition "is to establish standards by which to regulate usurious behavior by lenders
14 and others in Nevada," noting "the common usage of 'usury' is the lending of money at
15 unconscionable or exorbitant rates of interest." Omnibus Resp., at 1. But the Petition's proposed
16 changes concerning garnishment, writs of execution, the definition of "earnings" for purposes of
17 independent contractors versus employees, and other proposed changes, have nothing to do with
18 "the lending of money at unconscionable or exorbitant rates of interest." A debtor may become a
19 judgment debtor for reasons unrelated to "Predatory Payday and Other Loans." A judgment debtor
20 may be subject to garnishment for any number of reasons, including for unpaid debts that may or
21 may not be subject to any interest rate at all, much less any purportedly "unconscionable" interest
22 rate. To the extent the Proponents claim the Petition's overarching purpose is to prevent "the
23 lending of money at unconscionable or exorbitant rates of interest," the Proponents' argument
24 demonstrates that the Petition embraces multiple subjects, contrary to NRS 295.009's single-
25 subject requirement.

26 Further, to the extent the Proponents argue the Petition's disparate components are meant
27 "to achieve a single goal: ensuring Nevadans have better debt protections," the Proponents have
28 articulated an excessively generalized subject matter that, if adopted, would effectively nullify the

1 single-subject rule. *Las Vegas Taxpayer Accountability Committee*, 125 Nev. 165, 181, 208 P.3d
2 429, 440 (determining that “the purported single subject articulated in appellants’ opening brief,
3 ‘voter approval of use of taxpayer funds to finance large new development projects,’” was “an
4 excessively general subject that cannot meet NRS 295.009’s requirement”). While the policy goal
5 of ensuring Nevadans have better debt protections may be laudable, those protections are distinct
6 from proposed laws affecting the act of lending (as the Petition asserts to do). Additionally, the
7 general scope of that goal could plausibly relate to any proposal on some level. Were such an
8 excessively generalized subject permissible, there would be no need for the single-subject rule.
9 As statutes are not created to be superfluous, though, the single-subject rule within NRS 295.009
10 must be given effect. To satisfy the single-subject rule, NRS 295.009(2) more particularly requires
11 “the parts of the proposed initiative or referendum” to be “functionally related and germane to
12 each other in a way that provides sufficient notice of the general subject of, and of the interest
13 likely to be affected by, the proposed initiative or referendum.” (Emphasis added).

14 The Petition utterly fails to meet NRS 295.009’s defined standard. Accordingly, the Court
15 finds that the Petition violates NRS 295.009’s single-subject rule and cannot be circulated.¹

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26 ¹ The Court has also considered the remaining arguments raised by Plaintiffs, including challenges to the Petition’s
27 description of effect, the Petition’s purported fiscal impacts, and the Petition’s arguable referendum on Senate Bill
28 290’s earned wage access provisions. In light of this Court’s conclusion that the Petition violates the single-subject
rule, the Court need not reach the Plaintiffs’ remaining arguments. *Miller v. Burk*, 124 Nev. 579, 588-89 (2008) (the
Court need not address issues that are unnecessary to resolve the case at hand); *Nuleaf CLV Dispensary, LLC v. State
Dep’t of Health & Hum. Servs., Div. of Pub. & Behav. Health*, 134 Nev. 129, 136 n.2, 414 P.3d 305, 311 n.2 (2018).

ORDER

Based on the foregoing findings of fact and conclusions of law:

1. **IT IS ORDERED** and declared that Initiative Petition S-01-2024 violates Nevada's single subject rule under NRS 295.009.

2. **IT IS FURTHER ORDERED** and declared that the Nevada Secretary of State is enjoined from permitting Initiative Petition S-1-2024 from being circulated for signatures.

Dated this 12th day of April, 2024.

William A. Maddox

District Court Judge

Respectfully Submitted by:

/s/ Matthew Morris
J. Malcolm DeVoy (11950)
Matthew Morris (15068)
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REC'D & FILED

April 15, 2024
Date

WILLIAM SCOTT HOEN
CLERK

B Deputy

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

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

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.

Lead Case No.: 24 OC 00018 1B

Dept. No.: II

Consolidated with

Case No.: 24 OC 00021 1B

Dept. No.: II

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,
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8 Plaintiffs,
9
10 vs.
11
12 FRANCISCO V. AGUILAR, in his official
13 capacity as NEVADA SECRETARY OF
14 STATE, and KATE FELDMAN, an
15 individual,
16
17 Defendants,
18
19 and
20
21 STOP PREDATORY LENDING NV, a
22 Nevada Nonprofit Corp.,
23
24 Intervenor-Defendant.

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

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14 ACTIVEHOURS, INC., a Delaware
15 corporation; STACY PRESS, an
16 individual,
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18 Plaintiffs,
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20 vs.
21
22 KATE FELDMAN, an individual; STOP
23 PREDATORY LENDING NV, a Nevada
24 Nonprofit Corp.; and FRANCISCO V.
25 AGUILAR, in his official capacity as
26 NEVADA SECRETARY OF STATE,
27
28 Defendants.

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

**FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER
DENYING PLAINTIFFS' LEGAL CHALLENGE
TO INITIATIVE PETITION S-03-2024**

25 This matter came before this Court following four complaints, filed by four
26 different sets of plaintiffs, pursuant to NRS 295.061, challenging the legal sufficiency
27 of Initiative Petition S-03-2024 (the "Petition"). On January 24, 2024, Kate Feldman
28 filed Initiative Petition S-03-2024 with the Nevada Secretary of State (the

1 “Secretary”).

2 The Court, having reviewed the papers and pleadings on file, considered the
3 matter, being fully advised, and good cause appearing, finds, concludes, and orders
4 as follows:

5 **FINDINGS OF FACT AND CONCLUSIONS OF LAW¹**

6 **A. FINDINGS OF FACT**

7 **1. Initiative Petition S-03-2024**

8 On January 24, 2024, Kate Feldman, on behalf of Stop Predatory Lending NV,
9 filed the Petition with the Secretary. The Petition seeks to amend the Nevada Revised
10 Statutes by adding thereto a new Chapter, to be designated Chapter 604D:
11 Preventing Predatory Payday and Other Loans Act.

12 The Petition includes a description of effect as required by NRS 295.009(1)(b),
13 which reads, in full:

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

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

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

22 **2. Procedural History**

23 On January 26, 2024, Plaintiffs Nevadans For Financial Choice and Christina
24 Bauer (collectively, “Nevadans for Financial Choice” or “NFFC”) filed a Complaint for
25 Declaratory and Injunctive Relief challenging the legal sufficiency of Initiative
26

27 ¹ Any findings of fact which are more appropriately considered conclusions of
28 law shall be treated as such, and any conclusions of law which are more appropriately
considered findings of fact shall be treated as such.

1 Petition S-01-2024, pursuant to NRS 295.061, and a Brief in Support of the
2 Complaint. Subsequently, on February 14, Plaintiffs Nevadans for Financial Choice
3 filed a First Amended Complaint timely adding Initiative Petition S-03-2024 to their
4 challenge.

5 On January 29, Plaintiff DailyPay, Inc. (“DailyPay”) filed a Complaint for
6 Declaratory and Injunctive Relief challenging the legal sufficiency of both Initiative
7 Petition S-01-2024 and Initiative Petition S-03-2024, pursuant to NRS 295.061.

8 On January 29, Plaintiffs Preferred Capital Funding - Nevada, LLC and
9 Alliance For Responsible Consumer Legal Funding (collectively, “Preferred Capital”)
10 filed a Complaint for Declaratory and Injunctive Relief challenging the legal
11 sufficiency of both Initiative Petition S-01-2024 and Initiative Petition S-03-2024,
12 pursuant to NRS 295.061.

13 On February 13, Plaintiffs ActiveHours, Inc. and Stacy Press (collectively,
14 “ActiveHours”) filed a Complaint for Declaratory and Injunctive Relief challenging
15 the legal sufficiency of Initiative Petition S-03-2024, pursuant to NRS 295.061.

16 On or about February 22, the parties stipulated to, and the Court ordered, that
17 the filed suits be consolidated into one action to make the matter more efficient in
18 terms of judicial economy, and the parties agreed to a briefing schedule. After
19 briefing, the Court held hearing on the consolidated matters on March 22, 2024.

20 **B. CONCLUSIONS OF LAW**

21 **1. The Petition Does Not Violate Nevada’s Single Subject Rule**

22 NRS 295.009(1) provides that “[e]ach petition for initiative or referendum must
23 ... [e]mbrace but one subject and matters necessarily connected therewith and
24 pertaining thereto.” Subsection 2 of that statute explains that an initiative “embraces
25 but one subject and matters necessarily connected therewith and pertaining thereto,
26 if the parts of the proposed initiative ... are functionally related and germane to each
27 other in a way that provides sufficient notice of the general subject of, and of the
28 interests likely to be affected by, the proposed initiative.” NRS 295.009(2).

1 The single-subject requirement “facilitates the initiative process by preventing
2 petition drafters from circulating confusing petitions that address multiple subjects.”
3 *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d
4 1235, 1240 (2006). Thus, “the single-subject requirement helps both in promoting
5 informed decisions and in preventing the enactment of unpopular provisions by
6 attaching them to more attractive proposals or concealing them in lengthy, complex
7 initiatives (i.e., logrolling).” *Las Vegas Taxpayer Accountability Comte. v. City Council*
8 *of City of Las Vegas*, 125 Nev. 165, 176-77, 208 P.3d 429, 436-37 (2009).

9 In considering single-subject challenges, courts must first determine the
10 initiative’s purpose or subject. “To determine the initiative’s purpose or subject, this
11 court looks to its textual language and the proponents’ arguments.” *Las Vegas*
12 *Taxpayer*, 125 Nev. at 180, 208 P.3d at 439. Courts also will look at whether the
13 description of effect articulates an overarching purpose and explains how provisions
14 relate to a single subject. *Id.*

15 Furthermore, and most recently, in *Helton v. Nevada Voters First PAC*, 138
16 Nev. Adv. Op. 45, 512 P.3d 309 (2022), the Nevada Supreme Court stated that “even
17 if an initiative petition proposes more than one change, each of which could be
18 brought in separate initiative petitions, the proper consideration is whether the
19 changes are functionally related and germane to each other and the petition’s
20 subject.” *Id.*, 512 P.3d at 314. The Court found that “(b)oth categories of changes
21 proposed in the ... initiative concern the election process in Nevada and more
22 specifically how candidates for the specifically defined partisan offices are presented
23 to voters and elected.” *Id.*, 512 P.3d at 314-15.

24 In this case, the Court finds that the primary purpose of the Petition is to limit
25 interest rates on consumer loan transactions, and that all components of the Petition
26 are functionally related and germane to that purpose. The Court finds that the
27 Petition limits consumer interest rates on the transactions it defines as loans to 36%
28 annually. Each of the provisions of the Petition either establish that limit, make

1 conforming or ancillary changes to other statutes, or—in the case of the Sections 10
2 through 14, provide enforcement mechanisms necessary and germane to the
3 operation of the Petition’s purpose. Further, the Court finds that the Petition’s text,
4 its description, and the arguments of the Proponents in briefing and at hearing of
5 effect confirm the Petition’s primary purpose. Therefore, this Court finds that
6 Initiative Petition S-03-2024 does not violate NRS 295.009(1)(a)’s single-subject
7 requirement.

8 **2. The Petition’s Descriptions Of Effect Is Legally Adequate**

9 Under NRS 295.009(1)(b), every initiative must “[s]et forth, in not more than
10 200 words, a description of the effect of the initiative or referendum if the initiative
11 or referendum is approved by the voters.” The purpose of the description is to “prevent
12 voter confusion and promote informed decisions.” *Nevadans for Nev. v. Beers*, 122
13 Nev. 930, 939, 142 P.3d 339, 345 (2006). Thus, “[t]he importance of the description of
14 effect cannot be minimized, as it is what the voters see when deciding whether to
15 even sign a petition.” *Coal. for Nev.’s Future v. RIP Com. Tax, Inc.*, No. 69501, 2016
16 WL 2842925 at *2 (2016) (unpublished disposition) (citing *Educ. Initiative PAC v.*
17 *Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013)). “[T]he
18 description of effect may hold even more impact with respect to a referendum, since
19 merely gathering sufficient signatures to place a referendum on the ballot guarantees
20 a change to the law regardless of the election’s outcome.” *Id.* (citing Nev. Const.
21 art. 19, § 1(3) (providing that, if the voters approve the referendum, the statute “shall
22 stand as the law of the state and shall not be amended, annulled, repealed, set aside,
23 suspended or in any way made inoperative except by the direct vote of the people,”
24 and if the voters disapprove the statute or resolution, it is rendered void)).

25 The Nevada Supreme Court has repeatedly held that “a description of effect
26 must be straightforward, succinct, and non-argumentative, and it must not be
27 deceptive or misleading.” *Educ. Initiative PAC*, 129 Nev. at 42, 293 P.3d at 879
28 (internal quotation marks and citation omitted). It must also “explain the[]

1 ramifications of the proposed amendment” in order to allow voters to make an
2 informed decision. *Nev. Judges Ass’n v. Lau*, 112 Nev. 51, 59, 910 P.2d 898, 903
3 (1996).

4 This Court finds that the Petition’s description of effect meets the
5 requirements of Nevada law. The description of effect is straightforward, succinct,
6 under 200 words, and there is no basis for a finding of any argumentative language.
7 The description proceeds, succinctly and directly, through (1) a general statement of
8 the Petition’s purpose; (2) a neutral and accurate statement of current law regarding
9 interest rate limitations; (3) a description of the transactions to which the proposed
10 cap would apply; and (4) a statement of enforcement aspects of the proposal. The
11 Court finds that Plaintiffs fail to meet the burden of showing that the Petition’s
12 description of effect does not comply with NRS 295.009. Therefore, the Court finds
13 the description of effect for Initiative Petition S-03-2024 satisfies Nevada’s
14 NRS 295.009 requirement as the plain language of the description is straightforward,
15 succinct, and non-argumentative.

16 **3. The Petition Does Not Contain An Unfunded Mandate**

17 Article 19, section 2(1) of the Nevada Constitution provides that the initiative
18 process is “subject to the limitations of Article 19, Section 6, which “does not permit
19 the proposal of any statute or statutory amendment which makes an appropriation
20 or otherwise requires the expenditure of money, unless such statute or amendment
21 also imposes a sufficient tax, not prohibited by the constitution, or otherwise
22 constitutionally provides for raising the necessary revenue.” As the Nevada Supreme
23 Court holds, Section 6 applies to all proposed initiatives. *Rogers v. Heller*, 117 Nev.
24 169, 173, 18 P.3d 1034, 1036 (2001). The primary purpose behind this requirement is
25 to ensure that no initiative is presented to the voters without funding provisions when
26 the initiative requires an appropriation or expenditure.

27 “[A]n appropriation is the setting aside of funds, and an expenditure of money
28 is the payment of funds.” *Rogers v. Heller*, 117 Nev. 169, 173, 18 P.3d 1034, 1036

1 (2001). “A necessary appropriation or expenditure in *any* set amount or percentage is
2 a new requirement that otherwise does not exist.” *Id.*, 117 Nev. at 176. “[A]n initiative
3 makes an appropriation or expenditure when it leaves budgeting officials no
4 discretion in appropriating or expending the money mandated by the initiative—the
5 budgeting official must approve the appropriation or expenditure, regardless of any
6 other financial considerations.” *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 890, 141
7 P.3d 1224, 1233 (2006).

8 Here, this Court finds that plaintiffs do not provide any evidence regarding the
9 expected unfunded expenditures or costs they insist come along with the Petition, but
10 rather argue that increased regulation must somehow necessarily increase the
11 workload of state personnel, and therefore will increase state expenditures in some
12 form. While the Court is not unsympathetic to that argument, Nevada Supreme
13 Court case law authority interpreting Article 19, Section 6 does not support
14 invalidating a proposed ballot measure on those grounds. This Petition does not
15 require specific enforcement procedures, creates no additional regulatory bodies or
16 agencies, and Plaintiffs cannot point to specific instances of mandatory, non-
17 discretionary appropriations that would have to be made should this Petition become
18 law. Therefore, the Court finds that Plaintiffs fail to meet the burden of showing that
19 the Petition violates Article 19, Section 6 of the Nevada Constitution.

20 **4. The Petition Does Not Violate Article 19, Section 3**

21 Under Article 19, Section 3 of the Nevada Constitution, proponents must
22 “include the full text of the measure proposed” with their initiative petition. Nev.
23 Const. art. 19, § 3. Plaintiffs DailyPay and Nevadans for Financial Choice make “full-
24 text” arguments against the Petition. This Court rejects plaintiffs’ arguments and
25 finds that the Petition contains every provision that is proposed to be circulated for
26 signatures and to considered by the electorate, and that therefore there is no violation
27 of Article 19, Section 3.

28 Furthermore, this Court rejects the other various challenges to the Petition’s

1 legal sufficiency.²

2 **ORDER**

3 Based on the foregoing findings of fact and conclusions of law:

4 1. **IT IS THEREFORE ORDERED** and declared that Initiative Petition
5 S-03-2024 is legally sufficient.

6 2. **IT IS FURTHER ORDERED** and declared that Initiative Petition
7 S-03-2024 does not violate Nevada's single subject rule.

8 3. **IT IS FURTHER ORDERED** and declared that Initiative Petition
9 S-03-2024's description of effect meets the requirements of Nevada law.

10 4. **IT IS FURTHER ORDERED** and declared that Initiative Petition
11 S-03-2024 does not contain an unfunded mandate.

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24 ² To the extent other arguments were raised by any Plaintiffs, like DailyPay's
25 contention that the Petition is a referendum instead of an initiative, the Court has
26 considered them and finds them without merit. The Petition does not change a single
27 word of SB 290 (2023). Further, the Petition makes numerous amendments to Nevada
28 statutes, and creates new statutory sections; therefore the Petition is a statutory
initiative pursuant to Article 19, Section 2(3).

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BY _____
DEPUTY

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9 Attorneys for Kate Feldman and
10 Intervenor-Defendant

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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,

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

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,

Consolidated with

Defendants,

DAILYPAY, INC., a Delaware
Corporation,

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

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.

BRAVO SCHRAGER LLP

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 Plaintiffs,

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 and

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

18 Intervenor-Defendant.

Case No.: 24 OC 00023 1B

Dept. No.: I

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

22 Plaintiffs,

23 vs.

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

Defendants.

Case No.: 24 OC 00029 1B

Dept. No.: I

**NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF
LAW AND ORDER**

NOTICE IS HEREBY GIVEN that the FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND ORDER DENYING PLAINTIFFS' LEGAL
CHALLENGE TO INITIATIVE PETITION S-03-2024 was entered in the above-

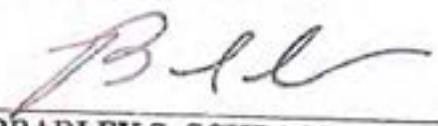
1 captioned matter on the 15th of April, 2024. A true and correct copy is attached
2 hereto as Exhibit 1.

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 15th day of February, 2024.

7 **BRAVO SCHRAGER LLP**

8
9 By: 

10 BRADLEY S. SCHRAGER, ESQ. (SBN 10217)
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16 Email: daniel@bravoschrager.com

17 *Attorneys for Kate Feldman and Intervenor-Defendant*

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 15th day of February, 2024, I served the foregoing
3 **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW**
4 **AND ORDER** via electronic mail, per the February 22, 2024, Stipulation and
5 Scheduling Order of the Court, as follows:

6 Laena St Jules, Esq.
7 **OFFICE OF THE ATTORNEY**
8 **GENERAL**
9 LStJules@ag.nv.gov
10 *Attorneys for Defendant,*
11 *Francisco V. Aguilar*

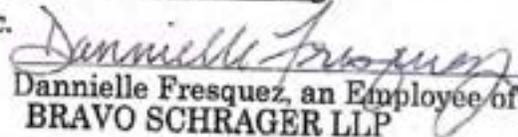
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24 *and Stacy Press*

Billie Shadron
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bshadron@carson.org


Dannielle Fresquez, an Employee of
BRAVO SCHRAGER LLP

25 **INDEX OF EXHIBITS**

Exhibit No.	Document Title	No. of Pages
1	Findings of Fact and Conclusions of Law And Order Denying Plaintiffs' Legal Challenge to Initiative Petition S-03-2024	10

EXHIBIT 1

EXHIBIT 1

REC'D & FILED

1/15/2024
Date

WILLIAM SCOTT HOEN
CLERK

IN THE FIRST JUDICIAL DISTRICT COURT By Deputy

OF THE STATE OF NEVADA IN AND FOR CARSON CITY

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BRAVO SCHRAGER LLP

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

Lead Case No.: 24 OC 00018 1B

Dept. No.: II

Consolidated with

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.

Case No.: 24 OC 00021 1B

Dept. No.: II

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

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26 Nonprofit Corp.; and FRANCISCO V.
27 AGUILAR, in his official capacity as
28 NEVADA SECRETARY OF STATE,

Defendants.

Case No.: 24 OC 00023

Dept. No.: I

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FILED IN ERROR

Case No.: 24 OC 00029 1B

Dept. No.: I

23 **FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER**
24 **DENYING PLAINTIFFS' LEGAL CHALLENGE**
25 **TO INITIATIVE PETITION S-03-2024**

26 This matter came before this Court following four complaints, filed by four
27 different sets of plaintiffs, pursuant to NRS 295.061, challenging the legal sufficiency
28 of Initiative Petition S-03-2024 (the "Petition"). On January 24, 2024, Kate Feldman
filed Initiative Petition S-03-2024 with the Nevada Secretary of State (the

1 "Secretary").

2 The Court, having reviewed the papers and pleadings on file, considered the
3 matter, being fully advised, and good cause appearing, finds, concludes, and orders
4 as follows:

5 **FINDINGS OF FACT AND CONCLUSIONS OF LAW¹**

6 **A. FINDINGS OF FACT**

7 **1. Initiative Petition S-03-2024**

8 On January 24, 2024, Kate Feldman, on behalf of Stop Predatory Lending NV,
9 filed the Petition with the Secretary. The Petition seeks to amend the Nevada Revised
10 Statutes by adding thereto a new Chapter, to be designated Chapter 604D:
11 Preventing Predatory Payday and Other Loans Act.

12 The Petition includes a description of effect as required by NRS 295.009(1)(b),
13 which reads, in full:

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

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

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

22 **2. Procedural History**

23 On January 26, 2024, Plaintiffs Nevadans For Financial Choice and Christina
24 Bauer (collectively, "Nevadans for Financial Choice" or "NFFC") filed a Complaint for
25 Declaratory and Injunctive Relief challenging the legal sufficiency of Initiative
26

27 ¹ Any findings of fact which are more appropriately considered conclusions of
28 law shall be treated as such, and any conclusions of law which are more appropriately
considered findings of fact shall be treated as such.

1 Petition S-01-2024, pursuant to NRS 295.061, and a Brief in Support of the
2 Complaint. Subsequently, on February 14, Plaintiffs Nevadans for Financial Choice
3 filed a First Amended Complaint timely adding Initiative Petition S-03-2024 to their
4 challenge.

5 On January 29, Plaintiff DailyPay, Inc. ("DailyPay") filed a Complaint for
6 Declaratory and Injunctive Relief challenging the legal sufficiency of both Initiative
7 Petition S-01-2024 and Initiative Petition S-03-2024, pursuant to NRS 295.061.

8 On January 29, Plaintiffs Preferred Capital Funding - Nevada, LLC and
9 Alliance For Responsible Consumer Legal Funding (collectively, "Preferred Capital")
10 filed a Complaint for Declaratory and Injunctive Relief challenging the legal
11 sufficiency of both Initiative Petition S-01-2024 and Initiative Petition S-03-2024,
12 pursuant to NRS 295.061.

13 On February 13, Plaintiffs ActiveHours, Inc. and Stacy Press (collectively,
14 "ActiveHours") filed a Complaint for Declaratory and Injunctive Relief challenging
15 the legal sufficiency of Initiative Petition S-03-2024, pursuant to NRS 295.061.

16 On or about February 22, the parties stipulated to, and the Court ordered, that
17 the filed suits be consolidated into one action to make the matter more efficient in
18 terms of judicial economy, and the parties agreed to a briefing schedule. After
19 briefing, the Court held hearing on the consolidated matters on March 22, 2024.

20 B. CONCLUSIONS OF LAW

21 1. The Petition Does Not Violate Nevada's Single Subject Rule

22 NRS 295.009(1) provides that "[e]ach petition for initiative or referendum must
23 ... [e]mbrace but one subject and matters necessarily connected therewith and
24 pertaining thereto." Subsection 2 of that statute explains that an initiative "embraces
25 but one subject and matters necessarily connected therewith and pertaining thereto,
26 if the parts of the proposed initiative ... are functionally related and germane to each
27 other in a way that provides sufficient notice of the general subject of, and of the
28 interests likely to be affected by, the proposed initiative." NRS 295.009(2).

1 The single-subject requirement "facilitates the initiative process by preventing
2 petition drafters from circulating confusing petitions that address multiple subjects."
3 *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d
4 1235, 1240 (2006). Thus, "the single-subject requirement helps both in promoting
5 informed decisions and in preventing the enactment of unpopular provisions by
6 attaching them to more attractive proposals or concealing them in lengthy, complex
7 initiatives (i.e., logrolling)." *Las Vegas Taxpayer Accountability Comte. v. City Council*
8 *of City of Las Vegas*, 125 Nev. 165, 176-77, 208 P.3d 429, 436-37 (2009).

9 In considering single-subject challenges, courts must first determine the
10 initiative's purpose or subject. "To determine the initiative's purpose or subject, this
11 court looks to its textual language and the proponents' arguments." *Las Vegas*
12 *Taxpayer*, 125 Nev. at 180, 208 P.3d at 439. Courts also will look at whether the
13 description of effect articulates an overarching purpose and explains how provisions
14 relate to a single subject. *Id.*

15 Furthermore, and most recently, in *Helton v. Nevada Voters First PAC*, 138
16 Nev. Adv. Op. 45, 512 P.3d 309 (2022), the Nevada Supreme Court stated that "even
17 if an initiative petition proposes more than one change, each of which could be
18 brought in separate initiative petitions, the proper consideration is whether the
19 changes are functionally related and germane to each other and the petition's
20 subject." *Id.*, 512 P.3d at 314. The Court found that "(b)oth categories of changes
21 proposed in the ... initiative concern the election process in Nevada and more
22 specifically how candidates for the specifically defined partisan offices are presented
23 to voters and elected." *Id.*, 512 P.3d at 314-15.

24 In this case, the Court finds that the primary purpose of the Petition is to limit
25 interest rates on consumer loan transactions, and that all components of the Petition
26 are functionally related and germane to that purpose. The Court finds that the
27 Petition limits consumer interest rates on the transactions it defines as loans to 36%
28 annually. Each of the provisions of the Petition either establish that limit, make

1 conforming or ancillary changes to other statutes, or—in the case of the Sections 10
2 through 14, provide enforcement mechanisms necessary and germane to the
3 operation of the Petition's purpose. Further, the Court finds that the Petition's text,
4 its description, and the arguments of the Proponents in briefing and at hearing of
5 effect confirm the Petition's primary purpose. Therefore, this Court finds that
6 Initiative Petition S-03-2024 does not violate NRS 295.009(1)(a)'s single-subject
7 requirement.

8 **2. The Petition's Descriptions Of Effect Is Legally Adequate**

9 Under NRS 295.009(1)(b), every initiative must “[s]et forth, in not more than
10 200 words, a description of the effect of the initiative or referendum if the initiative
11 or referendum is approved by the voters.” The purpose of the description is to “prevent
12 voter confusion and promote informed decisions.” *Nevadans for Nev. v. Beers*, 122
13 Nev. 930, 939, 142 P.3d 339, 345 (2006). Thus, “[t]he importance of the description of
14 effect cannot be minimized, as it is what the voters see when deciding whether to
15 even sign a petition.” *Coal. for Nev.'s Future v. RIP Com. Tax, Inc.*, No. 69501, 2016
16 WL 2842925 at *2 (2016) (unpublished disposition) (citing *Educ. Initiative PAC v.*
17 *Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013)). “[T]he
18 description of effect may hold even more impact with respect to a referendum, since
19 merely gathering sufficient signatures to place a referendum on the ballot guarantees
20 a change to the law regardless of the election's outcome.” *Id.* (citing Nev. Const.
21 art. 19, § 1(3) (providing that, if the voters approve the referendum, the statute “shall
22 stand as the law of the state and shall not be amended, annulled, repealed, set aside,
23 suspended or in any way made inoperative except by the direct vote of the people,”
24 and if the voters disapprove the statute or resolution, it is rendered void)).

25 The Nevada Supreme Court has repeatedly held that “a description of effect
26 must be straightforward, succinct, and non-argumentative, and it must not be
27 deceptive or misleading.” *Educ. Initiative PAC*, 129 Nev. at 42, 293 P.3d at 879
28 (internal quotation marks and citation omitted). It must also “explain the[]

1 ramifications of the proposed amendment" in order to allow voters to make an
2 informed decision. *Nev. Judges Ass'n v. Lau*, 112 Nev. 51, 59, 910 P.2d 898, 903
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4 This Court finds that the Petition's description of effect meets the
5 requirements of Nevada law. The description of effect is straightforward, succinct,
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7 The description proceeds, succinctly and directly, through (1) a general statement of
8 the Petition's purpose; (2) a neutral and accurate statement of current law regarding
9 interest rate limitations; (3) a description of the transactions to which the proposed
10 cap would apply; and (4) a statement of enforcement aspects of the proposal. The
11 Court finds that Plaintiffs fail to meet the burden of showing that the Petition's
12 description of effect does not comply with NRS 295.009. Therefore, the Court finds
13 the description of effect for Initiative Petition S-03-2024 satisfies Nevada's
14 NRS 295.009 requirement as the plain language of the description is straightforward,
15 succinct, and non-argumentative.

16 3. The Petition Does Not Contain An Unfunded Mandate

17 Article 19, section 2(1) of the Nevada Constitution provides that the initiative
18 process is "subject to the limitations of Article 19, Section 6, which "does not permit
19 the proposal of any statute or statutory amendment which makes an appropriation
20 or otherwise requires the expenditure of money, unless such statute or amendment
21 also imposes a sufficient tax, not prohibited by the constitution, or otherwise
22 constitutionally provides for raising the necessary revenue." As the Nevada Supreme
23 Court holds, Section 6 applies to all proposed initiatives. *Rogers v. Heller*, 117 Nev.
24 169, 173, 18 P.3d 1034, 1036 (2001). The primary purpose behind this requirement is
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27 "[A]n appropriation is the setting aside of funds, and an expenditure of money
28 is the payment of funds." *Rogers v. Heller*, 117 Nev. 169, 173, 18 P.3d 1034, 1036

1 (2001). "A necessary appropriation or expenditure in any set amount or percentage is
2 a new requirement that otherwise does not exist." *Id.*, 117 Nev. at 176. "[A]n initiative
3 makes an appropriation or expenditure when it leaves budgeting officials no
4 discretion in appropriating or expending the money mandated by the initiative—the
5 budgeting official must approve the appropriation or expenditure, regardless of any
6 other financial considerations." *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 890, 141
7 P.3d 1224, 1233 (2006).

8 Here, this Court finds that plaintiffs do not provide any evidence regarding the
9 expected unfunded expenditures or costs they insist come along with the Petition, but
10 rather argue that increased regulation must somehow necessarily increase the
11 workload of state personnel, and therefore will increase state expenditures in some
12 form. While the Court is not unsympathetic to that argument, Nevada Supreme
13 Court case law authority interpreting Article 19, Section 6 does not support
14 invalidating a proposed ballot measure on those grounds. This Petition does not
15 require specific enforcement procedures, creates no additional regulatory bodies or
16 agencies, and Plaintiffs cannot point to specific instances of mandatory, non-
17 discretionary appropriations that would have to be made should this Petition become
18 law. Therefore, the Court finds that Plaintiffs fail to meet the burden of showing that
19 the Petition violates Article 19, Section 6 of the Nevada Constitution.

20 **4. The Petition Does Not Violate Article 19, Section 3**

21 Under Article 19, Section 3 of the Nevada Constitution, proponents must
22 "include the full text of the measure proposed" with their initiative petition. Nev.
23 Const. art. 19, § 3. Plaintiffs DailyPay and Nevadans for Financial Choice make "full-
24 text" arguments against the Petition. This Court rejects plaintiffs' arguments and
25 finds that the Petition contains every provision that is proposed to be circulated for
26 signatures and to considered by the electorate, and that therefore there is no violation
27 of Article 19, Section 3.

28 Furthermore, this Court rejects the other various challenges to the Petition's

1 legal sufficiency.²

2 **ORDER**

3 Based on the foregoing findings of fact and conclusions of law:

4 1. **IT IS THEREFORE ORDERED** and declared that Initiative Petition
5 S-03-2024 is legally sufficient.

6 2. **IT IS FURTHER ORDERED** and declared that Initiative Petition
7 S-03-2024 does not violate Nevada's single subject rule.

8 3. **IT IS FURTHER ORDERED** and declared that Initiative Petition
9 S-03-2024's description of effect meets the requirements of Nevada law.

10 4. **IT IS FURTHER ORDERED** and declared that Initiative Petition
11 S-03-2024 does not contain an unfunded mandate.

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24 ² To the extent other arguments were raised by any Plaintiffs, like DailyPay's
25 contention that the Petition is a referendum instead of an initiative, the Court has
26 considered them and finds them without merit. The Petition does not change a single
27 word of SB 290 (2023). Further, the Petition makes numerous amendments to Nevada
28 statutes, and creates new statutory sections; therefore the Petition is a statutory
initiative pursuant to Article 19, Section 2(3).

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5. IT IS FURTHER ORDERED that plaintiffs' challenges to Initiative
Petition S-03-2023 are rejected, and Plaintiffs' complaints are dismissed with
prejudice as to their challenge to Initiative Petition S-03-2023.

Dated this 12th day of April, 2024.

William A. Maddox
District Court Judge

Respectfully Submitted by:

/s/ Bradley S. Schragar
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*Attorneys for Kate Feldman and
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WILLIAM SCOTT HENNING
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10 Intervenor-Defendant

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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,

Lead 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,

Consolidated with

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,

24 Defendant,

25 and

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

Intervenor-Defendants.

BRAVO SCHRAGER LLP

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.

Case No.: 24 OC 00023 1B

Dept. No.: I

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 00029 1B

Dept. No.: I

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW,

AND ORDER

NOTICE IS HEREBY GIVEN that the FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER GRANTING PLAINTIFFS' LEGAL
CHALLENGES TO INITIATIVE PETITION S-01-2024 was entered in the above-

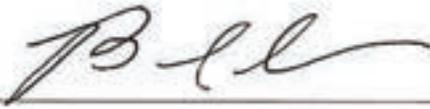
1 captioned matter on the 15th of April, 2024. A true and correct copy is attached
2 hereto as Exhibit 1.

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 15th day of February, 2024.

7 **BRAVO SCHRAGER LLP**

8
9 By: 
10 _____
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18 *Attorneys for Kate Feldman and Intervenor-Defendant*

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of February, 2024, I served the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** via electronic mail, per the February 22, 2024, Stipulation and Scheduling Order of the Court, as follows:

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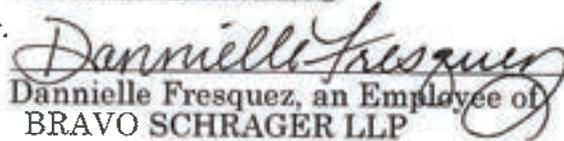
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INDEX OF EXHIBITS

Exhibit No.	Document Title	No. of Pages
1	Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Legal Challenge to Initiative Petition S-01-2024	10

EXHIBIT 1

EXHIBIT 1

REC'D & FILED

April 15, 2024

Date

WILLIAM SCOTT HOEN
CLERK

By [Signature] Deputy

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

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

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.

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 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**
19 **individual,**

20 Plaintiffs,

21 vs.

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

27 Defendants.

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

2024 APR 18 10 37 AM

WILLIAM

BY

FILED IN ERROR

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

**PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER
GRANTING PLAINTIFFS' LEGAL
CHALLENGES TO INITIATIVE
PETITION S-01-2024**

28 This matter came before this Court following four complaints, filed by four different sets
of plaintiffs, challenging the legal sufficiency and procedural defects of Initiative Petition S-01-
2024 (the "Petition"), under NRS 295.061. Intervenor-Defendant Kate Feldman ("Ms. Feldman")
filed the Petition on January 5, 2024, with Defendant Nevada Secretary of State (the "Secretary").
On March 22, 2024, the Court held a hearing on the several challenges to the Petition. The Court,
having reviewed the papers and pleadings on file, having considered the oral arguments presented
by the parties, and being fully advised and good cause appearing, finds, concludes, and orders as
follows:

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1 FINDINGS OF FACT AND CONCLUSIONS OF LAW

2 A. FINDINGS OF FACT

3 1. Initiative Petition S-01-2024

4 Ms. Feldman filed the Petition with the Secretary on January 5, 2024. The Petition proposes
5 to amend the Nevada Revised Statutes to include a new chapter 604D entitled the "Preventing
6 Predatory Payday and Other Loans Act." Ms. Feldman later filed a second Initiative Petition, S-03-
7 2024, on January 24, 2024, which proposes to enact the same "Preventing Predatory Payday and
8 Other Loans Act," but omits provisions included in the first Petition, S-01-2024. This Order
9 addresses only the first Petition.

10 The first Petition's Description of Effect, which is required under NRS 295.009(1)(b),
11 states as follows:

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

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

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

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

The Petition consists of 18 Sections and nearly 18 pages of new text to be added to the
Nevada Revised Statutes, as well as proposed deletions of, and amendments to, existing statutes.
The existing statutes that the Petition proposes to amend or delete relate to numerous other
statutory chapters that address topics including deferred deposit loans, high-interest loans, retail
installment transactions, banking, writs of execution, garnishment, property exempt from

1 judgment collection, and other matters. Generally, the Petition's "loan"-related provisions and
2 related penalties against "payday lender[s] or other person[s]" are proposed in Sections 1 through
3 16. The wage garnishment provisions of the proposed "Preventing Predatory Payday and Other
4 Loans Act" are set forth in Sections 17 through 18.

5 The Petition's proposed Act, at Section 5(1)-(2), defines the term "Loan" to include a
6 variety of financial transactions involving money or credit provided to a consumer, as follows:

7 **Loan defined.**

8 **1. For purposes of this chapter, "loan" means and includes:**

9
10 **(a) Money or credit provided to a consumer in exchange for the**
11 **consumer's agreement to a certain set of terms, including, but not limited**
12 **to, provisions for direct or indirect repayment, interest, fees, charges or**
13 **other payments, or other conditions;**

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

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

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

The Petition, at Section 9, proposes a "maximum interest rate" of 36% per year to apply to
"any loan or other transaction subject to" the proposed Act. In Sections 10 through 13, the Petition
proposes various penalties for exceeding the proposed maximum rate or otherwise violating the
provisions of the proposed Act. The Petition, at Section 14, also would constitute a declaration for
the State of Nevada to "opt out" of the federal "Depository Institutions Deregulation and Monetary
Control Act of 1980," Pub. L. 96-221, or "DIDMCA." The Petition further proposes, at Section

1 15, a prospective application of Section 9’s maximum interest rate, purporting to apply the
2 maximum rate to “entities licensed...to provide earned wage access services,” as defined in Senate
3 Bill 290 (Nev. Leg. 2023), beginning on January 1, 2030.

4 In addition to its various “payday loan”-related provisions and civil penalties, the Petition’s
5 Section 17 proposes to eliminate NRS 21.105(1)(a)-(n), which exempts certain sources of income
6 of a judgment debtor from garnishment, up to \$2,000. This Section of the Petition also eliminates
7 existing statutory categories of sources of income that NRS 21.105(1)(a)-(n) protects from
8 garnishment, and instead proposes a single, greater amount of \$5,000 that is not subject to
9 execution. The Petition also revises and restricts existing provisions under NRS 21.105(6) that
10 afford immunity for financial institutions that make a commercially reasonable effort to determine
11 whether money in a judgment debtor’s account is exempt from execution.

12 Finally, Section 18 of the Petition proposes to amend NRS 21.090(1)(g), which exempts
13 from execution certain amounts of a judgment debtor’s disposable earnings for any workweek, on
14 a sliding scale depending on the amount the judgment debtor earns during that period. The Petition
15 eliminates NRS 21.090(1)(g)’s existing protections and replaces them with higher thresholds, such
16 that more of a judgment debtor’s disposable earnings would be exempt from garnishment. The
17 Petition also redefines NRS 21.090(1)(g)(2)’s definition of “earnings” to specify that
18 “[c]ompensation paid or payable for personal services is earnings regardless of whether the
19 judgment debtor is classified as an independent contractor or an employee.” Finally, the Petition
20 proposes to adjust its revised exemption amounts for inflation pursuant to the Consumer Price
21 Index, and directs the Nevada Department of Business and Industry to publish the annual
22 adjustment each year, “round[ing] up” each annual adjustment “to the next \$10.”

23 **2. Procedural History**

24 On January 26, 2024, Plaintiffs Nevadans For Financial Choice and Christina Bauer
25 (collectively, “Nevadans for Financial Choice” or “NFFC”) filed a Complaint for Declaratory and
26 Injunctive Relief challenging the legal sufficiency of Initiative Petition S-01-2024, pursuant to
27 NRS 295.061, and submitted a Brief in Support of the Complaint. Subsequently, on February 14,
28

1 NFFC filed a First Amended Complaint timely adding Initiative Petition S-03-2024 to their
2 challenge.

3 On January 29, 2024, Plaintiff DailyPay, Inc. (“DailyPay”) filed a Complaint for
4 Declaratory and Injunctive Relief challenging the legal sufficiency of both Initiative Petition S-
5 01-2024 and Initiative Petition S-03-2024, pursuant to NRS 295.061.

6 On January 29, 2024, Plaintiffs Preferred Capital Funding - Nevada, LLC and Alliance For
7 Responsible Consumer Legal Funding (collectively, “Preferred Capital”) filed a Complaint for
8 Declaratory and Injunctive Relief challenging the legal sufficiency of both Initiative Petition S-
9 01-2024 and Initiative Petition S-03-2024, pursuant to NRS 295.061.

10 On February 13, 2024, Plaintiffs ActiveHours, Inc. and Stacy Press (collectively,
11 “ActiveHours”) filed a Complaint for Declaratory and Injunctive Relief challenging the legal
12 sufficiency of Initiative Petition S-03-2024, pursuant to NRS 295.061.

13 On or about February 22, 2024, the parties stipulated to, and the Court ordered, that the
14 filed suits be consolidated into one action to make the matter more efficient in terms of judicial
15 economy, the intervention of Ms. Feldman and Stop Predatory Lending NV, a Nevada nonprofit
16 corporation, as appropriate, and a briefing schedule. Ms. Feldman and Stop Predatory Lending NV
17 are collectively referred to herein as the “Proponents.” After briefing, the Court held hearing on
18 the consolidated matters on March 22, 2024.

19 **B. CONCLUSIONS OF LAW**

20 **The Petition Violates Nevada’s Single-Subject Rule.**

21 NRS 295.009(1) provides that “[e]ach petition for initiative or referendum must...
22 [e]mbrace but one subject and matters necessarily connected therewith and pertaining thereto.”
23 NRS 295.009(2) further provides that an initiative “embraces but one subject and matters
24 necessarily connected therewith and pertaining thereto, if the parts of the proposed initiative... are
25 functionally related and germane to each other in a way that provides sufficient notice of the
26 general subject of, and of the interests likely to be affected by, the proposed initiative[.]” NRS
27 295.009(2). NRS 295.061 authorizes a challenge to a proposed initiative when it violates the
28 single-subject rule set forth in NRS 295.009(1)-(2). Specifically, “whether an initiative or

1 referendum embraces but one subject and matters necessarily connected therewith and pertaining
2 thereto...may be challenged by filing a complaint in the First Judicial District Court.” NRS
3 295.061(1).

4 Nevada’s single-subject requirement “facilitates the initiative process by preventing
5 petition drafters from circulating confusing petitions that address multiple subjects.” *Nevadans for*
6 *the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d 1235, 1240 (2006). Thus,
7 “the single-subject requirement helps both in promoting informed decisions and in preventing the
8 enactment of unpopular provisions by attaching them to more attractive proposals or concealing
9 them in lengthy, complex initiatives (*i.e.*, logrolling).” *Las Vegas Taxpayer Accountability Comte.*
10 *v. City Council of City of Las Vegas*, 125 Nev. 165, 176-77, 208 P.3d 429, 436-37 (2009). After
11 all, unlike other “means of enacting law, the initiative process typically does not allow for unput
12 in drafting proposed laws.” *Id.*, 125 Nev. at 177 n. 6, 208 P.3d at 437 n.6 (citation omitted).

13 When considering a single-subject challenge, this Court must first determine the initiative’s
14 purpose or subject, “and then determine if each provision is functionally related and germane to
15 each other and the initiative’s purpose or subject.” *Helton v. Nev. Voters First PAC*, 138 Nev. Adv.
16 Op. 45, 512, P.3d 309, 314 (2022). “To determine the initiative’s purpose or subject, this court
17 looks to its textual language and the proponents’ arguments.” *Las Vegas Taxpayer*, 125 Nev. at
18 180, 208 P.3d at 439. Courts also will look at whether the description of effect articulates an
19 overarching purpose and explains how provisions relate to a single subject. *Id.* The proponents of
20 an initiative “may not circumvent the single-subject rule by phrasing the proposed law’s purpose
21 or object in terms of ‘excessive generality,’” nor “[] disparate provisions which appear
22 germane only to topics of excessive generality[.]” *Id.* (quoting *Harbor v. Deukmejian*, 240
23 Cal.Rptr. 569, 742 P.2d 1290, 1303 (1987)).

24 The Petition violates Nevada’s single-subject rule in several respects. First, by its own
25 description, the Petition embraces at least two disparate subjects in purporting to “establish[]
26 maximum interest rates charged to consumers, and shield[] more of people’s savings and earnings
27 from garnishment than under current law.” The Petition’s proposed changes to NRS Chapter 21,
28 which contains Nevada’s statutes on garnishment, execution, and exemptions from judgments.

1 have no nexus to the Petition's other putative purpose of imposing maximum interest rates on
2 "loans" and other transactions. Imposing a maximum interest rate on lenders and others is not
3 "functionally related and germane to" shielding a judgment debtor's savings and earnings from
4 garnishment. Nor is shielding a judgment debtor's savings from garnishment a matter that is
5 "necessarily connected" with and pertaining to "Preventing Predatory Payday and Other Loans."
6 The shielding of debtor assets in the collection of judgments applies beyond those arising out of
7 the proposed "Preventing Predatory Payday and Other Loans Act." By the Petition's own text, it
8 is clear that the Proponents have improperly joined multiple discrete and disparate subjects
9 together into a single Petition, in violation of NRS 295.009's single-subject rule.

10 Second, the Proponents' arguments in favor of the Petition demonstrate that the Petition
11 embraces more than a single subject, even when including matters necessarily connected therewith
12 and pertaining thereto. In their Omnibus Response Brief, Proponents argue that the common policy
13 goal behind the Petition "is to establish standards by which to regulate usurious behavior by lenders
14 and others in Nevada," noting "the common usage of 'usury' is the lending of money at
15 unconscionable or exorbitant rates of interest." Omnibus Resp., at 1. But the Petition's proposed
16 changes concerning garnishment, writs of execution, the definition of "earnings" for purposes of
17 independent contractors versus employees, and other proposed changes, have nothing to do with
18 "the lending of money at unconscionable or exorbitant rates of interest." A debtor may become a
19 judgment debtor for reasons unrelated to "Predatory Payday and Other Loans." A judgment debtor
20 may be subject to garnishment for any number of reasons, including for unpaid debts that may or
21 may not be subject to any interest rate at all, much less any purportedly "unconscionable" interest
22 rate. To the extent the Proponents claim the Petition's overarching purpose is to prevent "the
23 lending of money at unconscionable or exorbitant rates of interest," the Proponents' argument
24 demonstrates that the Petition embraces multiple subjects, contrary to NRS 295.009's single-
25 subject requirement.

26 Further, to the extent the Proponents argue the Petition's disparate components are meant
27 "to achieve a single goal: ensuring Nevadans have better debt protections," the Proponents have
28 articulated an excessively generalized subject matter that, if adopted, would effectively nullify the

1 single-subject rule. *Las Vegas Taxpayer Accountability Committee*, 125 Nev. 165, 181, 208 P.3d
2 429, 440 (determining that “the purported single subject articulated in appellants’ opening brief,
3 ‘voter approval of use of taxpayer funds to finance large new development projects,’” was “an
4 excessively general subject that cannot meet NRS 295.009’s requirement”). While the policy goal
5 of ensuring Nevadans have better debt protections may be laudable, those protections are distinct
6 from proposed laws affecting the act of lending (as the Petition asserts to do). Additionally, the
7 general scope of that goal could plausibly relate to any proposal on some level. Were such an
8 excessively generalized subject permissible, there would be no need for the single-subject rule.
9 As statutes are not created to be superfluous, though, the single-subject rule within NRS 295.009
10 must be given effect. To satisfy the single-subject rule, NRS 295.009(2) more particularly requires
11 “the parts of the proposed initiative or referendum” to be “functionally related and germane to
12 each other in a way that provides sufficient notice of the general subject of, and of the interest
13 likely to be affected by, the proposed initiative or referendum.” (Emphasis added).

14 The Petition utterly fails to meet NRS 295.009’s defined standard. Accordingly, the Court
15 finds that the Petition violates NRS 295.009’s single-subject rule and cannot be circulated.¹

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25
26 ¹ The Court has also considered the remaining arguments raised by Plaintiffs, including challenges to the Petition’s
27 description of effect, the Petition’s purported fiscal impacts, and the Petition’s arguable referendum on Senate Bill
28 290’s earned wage access provisions. In light of this Court’s conclusion that the Petition violates the single-subject
rule, the Court need not reach the Plaintiffs’ remaining arguments. *Miller v. Burk*, 124 Nev. 579, 588-89 (2008) (the
Court need not address issues that are unnecessary to resolve the case at hand); *Nuleaf CLV Dispensary, LLC v. State
Dep’t of Health & Hum. Servs., Div. of Pub. & Behav. Health*, 134 Nev. 129, 136 n.2, 414 P.3d 305, 311 n.2 (2018).

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ORDER

Based on the foregoing findings of fact and conclusions of law:

1. **IT IS ORDERED** and declared that Initiative Petition S-01-2024 violates Nevada's single subject rule under NRS 295.009.

2. **IT IS FURTHER ORDERED** and declared that the Nevada Secretary of State is enjoined from permitting Initiative Petition S-1-2024 from being circulated for signatures.

Dated this 12th day of April, 2024.

William A. Maddox

District Court Judge

Respectfully Submitted by:

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Attorneys for Plaintiffs DailyPay, Inc.

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10 Intervenor-Defendant

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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,

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,

19 Plaintiff,

20 vs.

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

24 Defendant,

25 and

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

Intervenor-Defendants.

Lead Case No.: 24 OC 00018 1B

Dept. No.: II

NOTICE OF APPEAL

Consolidated with

Case No.: 24 OC 00021 1B

Dept. No.: II

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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 Plaintiffs,

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 and

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

18 Intervenor-Defendant.

Case No.: 24 OC 00023 1B

Dept. No.: I

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

22 Plaintiffs,

23 vs.

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

Defendants.

Case No.: 24 OC 00029 1B

Dept. No.: I

29
30 **NOTICE OF APPEAL**

31 Defendant KATE FELDMAN and Intervenor-Defendant STOP
32 PREDATORY LENDING NV, by and through their undersigned counsel, and
33 pursuant to NRS 41.670(4), hereby appeals to the Supreme Court of the State of
34 Nevada the district court's FINDINGS OF FACT, CONCLUSIONS OF LAW, AND

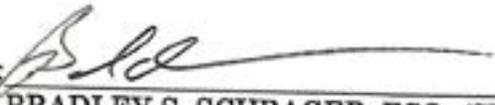
1 ORDER GRANTING PLAINTIFFS' LEGAL CHALLENGES TO INITIATIVE
2 PETITION S-01-2024 entered on April 15, 2024. A true and correct copy of the district
3 court's order is attached hereto as Exhibit A.

4 **AFFIRMATION**

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

7 DATED this 16th day of April, 2024.

8 **BRAVO SCHRAGER LLP**

9
10 By: 

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18 *Attorneys for Kate Feldman and Intervenor-Defendant*

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 16th day of April, 2024, I served the foregoing
3 **NOTICE OF APPEAL** via electronic mail, per the February 22, 2024, Stipulation
4 and Scheduling Order of the Court, as follows:

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23 *and Stacy Press*

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By: Dannielle Fresquez
Dannielle Fresquez, an Employee of
BRAVO SCHRAGER LLP

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INDEX OF EXHIBITS

Exhibit No.	Document Title	No. of Pages
A	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PLAINTIFFS' LEGAL CHALLENGES TO INITIATIVE PETITION S-01-2024	10

EXHIBIT A

EXHIBIT A

REC'D & FILED

April 15, 2024
Date

WILLIAM SCOTT HOEN
CLERK

IN THE FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR CARSON CITY
By [Signature] Deputy

1
2
3
4 NEVADANS FOR FINANCIAL CHOICE, a
5 Nevada Political Action Committee, and
6 CHRISTINA BAUER, an individual,

Plaintiffs,

7 vs.

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

Defendants.

12 DAILYPAY, INC., a Delaware Corporation,

13 Plaintiff,

14 vs.

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

Defendant,

18 and

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

Intervenor-Defendants.

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 FUNDING
2 NEVADA, LLC, a Nevada limited liability
3 company, and ALLIANCE FOR
4 RESPONSIBLE CONSUMER LEGAL
5 FUNDING, an Illinois nonprofit corporation,
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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 00029 IB
Dept. No.: I

2024 APR 26

WILLIAM

BY

RECORDED & FILED
FILED IN ERROR

Case No.: 24 OC 00029 IB
Dept. No.: I

~~PROPOSED~~ FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER
GRANTING PLAINTIFFS' LEGAL
CHALLENGES TO INITIATIVE
PETITION S-01-2024

21 This matter came before this Court following four complaints, filed by four different sets
22 of plaintiffs, challenging the legal sufficiency and procedural defects of Initiative Petition S-01-
23 2024 (the "Petition"), under NRS 295.061. Intervenor-Defendant Kate Feldman ("Ms. Feldman")
24 filed the Petition on January 5, 2024, with Defendant Nevada Secretary of State (the "Secretary").
25 On March 22, 2024, the Court held a hearing on the several challenges to the Petition. The Court,
26 having reviewed the papers and pleadings on file, having considered the oral arguments presented
27 by the parties, and being fully advised and good cause appearing, finds, concludes, and orders as
28 follows:

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1 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

2 **A. FINDINGS OF FACT**

3 **1. Initiative Petition S-01-2024**

4 Ms. Feldman filed the Petition with the Secretary on January 5, 2024. The Petition proposes
5 to amend the Nevada Revised Statutes to include a new chapter 604D entitled the "Preventing
6 Predatory Payday and Other Loans Act." Ms. Feldman later filed a second Initiative Petition, S-03-
7 2024, on January 24, 2024, which proposes to enact the same "Preventing Predatory Payday and
8 Other Loans Act," but omits provisions included in the first Petition, S-01-2024. This Order
9 addresses only the first Petition.

10 The first Petition's Description of Effect, which is required under NRS 295.009(1)(b),
11 states as follows:

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

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

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

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

The Petition consists of 18 Sections and nearly 18 pages of new text to be added to the
Nevada Revised Statutes, as well as proposed deletions of, and amendments to, existing statutes.
The existing statutes that the Petition proposes to amend or delete relate to numerous other
statutory chapters that address topics including deferred deposit loans, high-interest loans, retail
installment transactions, banking, writs of execution, garnishment, property exempt from

1 judgment collection, and other matters. Generally, the Petition's "loan"-related provisions and
2 related penalties against "payday lender[s] or other person[s]" are proposed in Sections 1 through
3 16. The wage garnishment provisions of the proposed "Preventing Predatory Payday and Other
4 Loans Act" are set forth in Sections 17 through 18.

5 The Petition's proposed Act, at Section 5(1)-(2), defines the term "Loan" to include a
6 variety of financial transactions involving money or credit provided to a consumer, as follows:

7 **Loan defined.**

8 **1. For purposes of this chapter, "loan" means and includes:**

9
10 (a) *Money or credit provided to a consumer in exchange for the
11 consumer's agreement to a certain set of terms, including, but not limited
12 to, provisions for direct or indirect repayment, interest, fees, charges or
13 other payments, or other conditions;*

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

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

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

The Petition, at Section 9, proposes a "maximum interest rate" of 36% per year to apply to
"any loan or other transaction subject to" the proposed Act. In Sections 10 through 13, the Petition
proposes various penalties for exceeding the proposed maximum rate or otherwise violating the
provisions of the proposed Act. The Petition, at Section 14, also would constitute a declaration for
the State of Nevada to "opt out" of the federal "Depository Institutions Deregulation and Monetary
Control Act of 1980," Pub. L. 96-221, or "DIDMCA." The Petition further proposes, at Section

1 15, a prospective application of Section 9's maximum interest rate, purporting to apply the
2 maximum rate to "entities licensed...to provide earned wage access services," as defined in Senate
3 Bill 290 (Nev. Leg. 2023), beginning on January 1, 2030.

4 In addition to its various "payday loan"-related provisions and civil penalties, the Petition's
5 Section 17 proposes to eliminate NRS 21.105(1)(a)-(n), which exempts certain sources of income
6 of a judgment debtor from garnishment, up to \$2,000. This Section of the Petition also eliminates
7 existing statutory categories of sources of income that NRS 21.105(1)(a)-(n) protects from
8 garnishment, and instead proposes a single, greater amount of \$5,000 that is not subject to
9 execution. The Petition also revises and restricts existing provisions under NRS 21.105(6) that
10 afford immunity for financial institutions that make a commercially reasonable effort to determine
11 whether money in a judgment debtor's account is exempt from execution.

12 Finally, Section 18 of the Petition proposes to amend NRS 21.090(1)(g), which exempts
13 from execution certain amounts of a judgment debtor's disposable earnings for any workweek, on
14 a sliding scale depending on the amount the judgment debtor earns during that period. The Petition
15 eliminates NRS 21.090(1)(g)'s existing protections and replaces them with higher thresholds, such
16 that more of a judgment debtor's disposable earnings would be exempt from garnishment. The
17 Petition also redefines NRS 21.090(1)(g)(2)'s definition of "earnings" to specify that
18 "[c]ompensation paid or payable for personal services is earnings regardless of whether the
19 judgment debtor is classified as an independent contractor or an employee." Finally, the Petition
20 proposes to adjust its revised exemption amounts for inflation pursuant to the Consumer Price
21 Index, and directs the Nevada Department of Business and Industry to publish the annual
22 adjustment each year, "round[ing] up" each annual adjustment "to the next \$10."

23 2. Procedural History

24 On January 26, 2024, Plaintiffs Nevadans For Financial Choice and Christina Bauer
25 (collectively, "Nevadans for Financial Choice" or "NFFC") filed a Complaint for Declaratory and
26 Injunctive Relief challenging the legal sufficiency of Initiative Petition S-01-2024, pursuant to
27 NRS 295.061, and submitted a Brief in Support of the Complaint. Subsequently, on February 14,
28

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1 NFFC filed a First Amended Complaint timely adding Initiative Petition S-03-2024 to their
2 challenge.

3 On January 29, 2024, Plaintiff DailyPay, Inc. ("DailyPay") filed a Complaint for
4 Declaratory and Injunctive Relief challenging the legal sufficiency of both Initiative Petition S-
5 01-2024 and Initiative Petition S-03-2024, pursuant to NRS 295.061.

6 On January 29, 2024, Plaintiffs Preferred Capital Funding - Nevada, LLC and Alliance For
7 Responsible Consumer Legal Funding (collectively, "Preferred Capital") filed a Complaint for
8 Declaratory and Injunctive Relief challenging the legal sufficiency of both Initiative Petition S-
9 01-2024 and Initiative Petition S-03-2024, pursuant to NRS 295.061.

10 On February 13, 2024, Plaintiffs ActiveHours, Inc. and Stacy Press (collectively,
11 "ActiveHours") filed a Complaint for Declaratory and Injunctive Relief challenging the legal
12 sufficiency of Initiative Petition S-03-2024, pursuant to NRS 295.061.

13 On or about February 22, 2024, the parties stipulated to, and the Court ordered, that the
14 filed suits be consolidated into one action to make the matter more efficient in terms of judicial
15 economy, the intervention of Ms. Feldman and Stop Predatory Lending NV, a Nevada nonprofit
16 corporation, as appropriate, and a briefing schedule. Ms. Feldman and Stop Predatory Lending NV
17 are collectively referred to herein as the "Proponents." After briefing, the Court held hearing on
18 the consolidated matters on March 22, 2024.

19 **B. CONCLUSIONS OF LAW**

20 **The Petition Violates Nevada's Single-Subject Rule.**

21 NRS 295.009(1) provides that "[e]ach petition for initiative or referendum must...
22 [e]mbrace but one subject and matters necessarily connected therewith and pertaining thereto."
23 NRS 295.009(2) further provides that an initiative "embraces but one subject and matters
24 necessarily connected therewith and pertaining thereto, if the parts of the proposed initiative... are
25 functionally related and germane to each other in a way that provides sufficient notice of the
26 general subject of, and of the interests likely to be affected by, the proposed initiative[.]" NRS
27 295.009(2). NRS 295.061 authorizes a challenge to a proposed initiative when it violates the
28 single-subject rule set forth in NRS 295.009(1)-(2). Specifically, "whether an initiative or

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1 referendum embraces but one subject and matters necessarily connected therewith and pertaining
2 thereto...may be challenged by filing a complaint in the First Judicial District Court." NRS
3 295.061(1).

4 Nevada's single-subject requirement "facilitates the initiative process by preventing
5 petition drafters from circulating confusing petitions that address multiple subjects." *Nevadans for*
6 *the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d 1235, 1240 (2006). Thus,
7 "the single-subject requirement helps both in promoting informed decisions and in preventing the
8 enactment of unpopular provisions by attaching them to more attractive proposals or concealing
9 them in lengthy, complex initiatives (*i.e.*, logrolling)." *Las Vegas Taxpayer Accountability Comte.*
10 *v. City Council of City of Las Vegas*, 125 Nev. 165, 176-77, 208 P.3d 429, 436-37 (2009). After
11 all, unlike other "means of enacting law, the initiative process typically does not allow for unput
12 in drafting proposed laws." *Id.*, 125 Nev. at 177 n. 6, 208 P.3d at 437 n.6 (citation omitted).

13 When considering a single-subject challenge, this Court must first determine the initiative's
14 purpose or subject, "and then determine if each provision is functionally related and germane to
15 each other and the initiative's purpose or subject." *Helton v. Nev. Voters First PAC*, 138 Nev. Adv.
16 Op. 45, 512, P.3d 309, 314 (2022). "To determine the initiative's purpose or subject, this court
17 looks to its textual language and the proponents' arguments." *Las Vegas Taxpayer*, 125 Nev. at
18 180, 208 P.3d at 439. Courts also will look at whether the description of effect articulates an
19 overarching purpose and explains how provisions relate to a single subject. *Id.* The proponents of
20 an initiative "may not circumvent the single-subject rule by phrasing the proposed law's purpose
21 or object in terms of 'excessive generality,'" nor "'join[] disparate provisions which appear
22 germane only to topics of excessive generality[.]'" *Id.* (quoting *Harbor v. Deukmejian*, 240
23 Cal.Rptr. 569, 742 P.2d 1290, 1303 (1987)).

24 The Petition violates Nevada's single-subject rule in several respects. First, by its own
25 description, the Petition embraces at least two disparate subjects in purporting to "establish[]
26 maximum interest rates charged to consumers, and shield[] more of people's savings and earnings
27 from garnishment than under current law." The Petition's proposed changes to NRS Chapter 21,
28 which contains Nevada's statutes on garnishment, execution, and exemptions from judgments,

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1 have no nexus to the Petition's other putative purpose of imposing maximum interest rates on
2 "loans" and other transactions. Imposing a maximum interest rate on lenders and others is not
3 "functionally related and germane to" shielding a judgment debtor's savings and earnings from
4 garnishment. Nor is shielding a judgment debtor's savings from garnishment a matter that is
5 "necessarily connected" with and pertaining to "Preventing Predatory Payday and Other Loans."
6 The shielding of debtor assets in the collection of judgments applies beyond those arising out of
7 the proposed "Preventing Predatory Payday and Other Loans Act." By the Petition's own text, it
8 is clear that the Proponents have improperly joined multiple discrete and disparate subjects
9 together into a single Petition, in violation of NRS 295.009's single-subject rule.

10 Second, the Proponents' arguments in favor of the Petition demonstrate that the Petition
11 embraces more than a single subject, even when including matters necessarily connected therewith
12 and pertaining thereto. In their Omnibus Response Brief, Proponents argue that the common policy
13 goal behind the Petition "is to establish standards by which to regulate usurious behavior by lenders
14 and others in Nevada," noting "the common usage of 'usury' is the lending of money at
15 unconscionable or exorbitant rates of interest." Omnibus Resp., at 1. But the Petition's proposed
16 changes concerning garnishment, writs of execution, the definition of "earnings" for purposes of
17 independent contractors versus employees, and other proposed changes, have nothing to do with
18 "the lending of money at unconscionable or exorbitant rates of interest." A debtor may become a
19 judgment debtor for reasons unrelated to "Predatory Payday and Other Loans." A judgment debtor
20 may be subject to garnishment for any number of reasons, including for unpaid debts that may or
21 may not be subject to any interest rate at all, much less any purportedly "unconscionable" interest
22 rate. To the extent the Proponents claim the Petition's overarching purpose is to prevent "the
23 lending of money at unconscionable or exorbitant rates of interest," the Proponents' argument
24 demonstrates that the Petition embraces multiple subjects, contrary to NRS 295.009's single-
25 subject requirement.

26 Further, to the extent the Proponents argue the Petition's disparate components are meant
27 "to achieve a single goal: ensuring Nevadans have better debt protections," the Proponents have
28 articulated an excessively generalized subject matter that, if adopted, would effectively nullify the

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1 single-subject rule. *Las Vegas Taxpayer Accountability Committee*, 125 Nev. 165, 181, 208 P.3d
2 429, 440 (determining that “the purported single subject articulated in appellants’ opening brief,
3 ‘voter approval of use of taxpayer funds to finance large new development projects,’” was “an
4 excessively general subject that cannot meet NRS 295.009’s requirement”). While the policy goal
5 of ensuring Nevadans have better debt protections may be laudable, those protections are distinct
6 from proposed laws affecting the act of lending (as the Petition asserts to do). Additionally, the
7 general scope of that goal could plausibly relate to any proposal on some level. Were such an
8 excessively generalized subject permissible, there would be no need for the single-subject rule.
9 As statutes are not created to be superfluous, though, the single-subject rule within NRS 295.009
10 must be given effect. To satisfy the single-subject rule, NRS 295.009(2) more particularly requires
11 “the parts of the proposed initiative or referendum” to be “functionally related and germane to
12 each other in a way that provides sufficient notice of the general subject of, and of the interest
13 likely to be affected by, the proposed initiative or referendum.” (Emphasis added).

14 The Petition utterly fails to meet NRS 295.009’s defined standard. Accordingly, the Court
15 finds that the Petition violates NRS 295.009’s single-subject rule and cannot be circulated.¹

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26 ¹ The Court has also considered the remaining arguments raised by Plaintiffs, including challenges to the Petition’s
27 description of effect, the Petition’s purported fiscal impacts, and the Petition’s arguable referendum on Senate Bill
28 290’s earned wage access provisions. In light of this Court’s conclusion that the Petition violates the single-subject
rule, the Court need not reach the Plaintiffs’ remaining arguments. *Miller v. Burk*, 124 Nev. 579, 588-89 (2008) (the
Court need not address issues that are unnecessary to resolve the case at hand); *Nelson/CLY Dispensary, LLC v. State
Dep’t of Health & Hum. Servs., Div. of Pub. & Behav. Health*, 134 Nev. 129, 136 n.2, 414 P.3d 305, 311 n.2 (2018).

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ORDER

Based on the foregoing findings of fact and conclusions of law:

1. **IT IS ORDERED** and declared that Initiative Petition S-01-2024 violates Nevada's single subject rule under NRS 295.009.

2. **IT IS FURTHER ORDERED** and declared that the Nevada Secretary of State is enjoined from permitting Initiative Petition S-1-2024 from being circulated for signatures.

Dated this 12th day of April, 2024.

William A. Maddox

District Court Judge

Respectfully Submitted by:

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2024 APR 17 PH 3:17

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CLERK

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Intervenor-Defendant

6
7 **IN THE FIRST JUDICIAL DISTRICT COURT**
8 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

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

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

11 Plaintiffs,

12 vs.

CASE APPEAL STATEMENT

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

16 Defendants,

Consolidated with

18 DAILYPAY, INC., a Delaware
Corporation,

Case No.: 24 OC 00021 1B

19 Plaintiff,

Dept. No.: II

20 vs.

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

23 Defendant,

24 and

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

27 Intervenor-Defendants.
28

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1 PREFERRED CAPITAL FUNDING-
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3 company, and ALLIANCE FOR
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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 **CASE APPEAL STATEMENT**

30 Defendant KATE FELDMAN and Intervenor-Defendant STOP PREDATORY
31 LENDING NV, by and through their undersigned counsel, and pursuant to NRS
32 41.670(4), hereby appeals the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
33 ORDER GRANTING PLAINTIFFS' LEGAL CHALLENGES TO INITIATIVE
34 PETITION S-01-2024 that the Court entered on April 15, 2024.

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9 Respondent: *Preferred Capital Funding- Nevada, LLC, and Alliance For*
10 *Responsible Consumer Legal Funding*

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22 Respondent: *Activehours, Inc. and Stacy Press*

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5. Attorneys listed in sections 3 and 4 above are licensed to practice law in the State of Nevada.

6. Appellants were represented by counsel in the district court.

7. Appellants are represented by counsel on appeal.

8. No request has been made to proceed in forma pauperis.

9. The Complaints in the consolidated matter were originally filed as follows: 24 OC 00018 1B January 26, 2024; 24 OC 00021 1B January 29, 2024; 24 OC 00023 1B January 29, 2024; 24 OC 00029 1B February 13, 2024.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 16th day of April, 2024, I served the foregoing
3 **CASE APPEAL STATEMENT** via electronic mail, per the February 22, 2024,
4 Stipulation and Scheduling Order of the Court, as follows:

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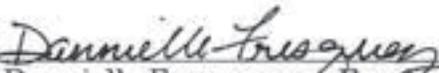
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Bv: 
Dannielle Fresquez, an Employee of
BRAVO SCHRAGER LLP