

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

Appellants,

vs.

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

Respondents.

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**BRIEF AMICUS CURIAE OF  
NEVADANS FOR THE COMMON GOOD  
IN SUPPORT OF APPELLANTS AND OF REVERSAL**

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**TABLE OF CONTENTS**

N.R.A.P. 26.1 DISCLOSURE STATEMENT.....iii

TABLE OF AUTHORITIES.....iv

STATEMENT OF IDENTITY OF AMICUS CURIAE, INTEREST AND  
AUTHORITY TO FILE.....vi

SUMMARY OF ARGUMENT.....1

ARGUMENT.....2

    I.    The Initiative Petition Has A Single Subject of Protecting  
        Nevadans from The Debt Treadmill.....2

    II.   Interest Rate Caps And Debt Collection Protections Are  
        Interconnected Consumer Protections Needed To Curb  
        “Set Up To Fail” Lending.....5

CONCLUSION.....11

CERTIFICATE OF COMPLIANCE.....12

CERTIFICATE OF SERVICE.....13

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

The undersigned counsel of record certifies that there are no persons or entities described in N.R.A.P. 26.1 that must be disclosed.

The following law firm has appeared and/or is expected to appear in this Court on behalf of amicus curiae Nevadans for the Common Good:

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Dated this 9<sup>th</sup> day of May 2024.

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## TABLE OF AUTHORITIES

### Cases

<i>Consumer Financial Protection Bureau and New York v. Credit Acceptance Corporation</i> , No. 1:2023cv00038 (S.D.N.Y. 2023).....	8
<i>Las Vegas Taxpayer Accountability Committee v. City Council</i> , 125 Nev. 165, 208 P.3d 429 (2009).....	4
<i>Nevadans for Reprod. Freedom v. Washington</i> , 140 Nev. Adv. Op. 28, 2024 WL 1688083 (2024).....	4

### Statutes

NRS 295.009.....	2, 3, 4
NRS 604A.....	7

### Other Authorities

CAROLYN CARTER, LAUREN SAUNDERS, & MARGOT SAUNDERS, MISALIGNED INCENTIVES: WHY HIGH RATE INSTALLMENT LENDERS WANT BORROWERS WHO WILL DEFAULT, NATIONAL CONSUMER LAW CENTER (2016).....	5, 6
CASEY CHIAPETTA, DEBT COLLECTION CASES CONTINUED TO DOMINATE CIVIL DOCKETS DURING PANDEMIC, THE PEW CHARITABLE TRUSTS (2023).....	10
CHARLA RIOS, RED ALERT RATES: ANNUAL PERCENTAGE RATES ON \$400, SINGLE-PAYMENT PAYDAY LOANS IN THE UNITED STATES, CENTER FOR RESPONSIBLE LENDING (2023).....	7
CONSUMER FINANCIAL PROTECTION BUREAU, CFPB AND NEW YORK ATTORNEY GENERAL SUE CREDIT ACCEPTANCE FOR HIDING AUTO LOAN COSTS, SETTING BORROWERS UP TO FAIL (2023).....	8
KATHLEEN BURKE, JONATHAN LANNING, JESSE LEARY, & JIALAN WANG, CONSUMER FINANCIAL PROTECTION BUREAU, CFPB DATA POINT: PAYDAY LENDING (2014).....	7

SUSANNA MONTEZEMOLO, & SARAH WOLFF, PAYDAY MAYDAY: VISIBLE AND  
 INVISIBLE PAYDAY LENDING DEFAULTS, CENTER FOR RESPONSIBLE  
 LENDING (2015).....8

**Rules**

N.R.A.P. 26.1.....iii  
 N.R.A.P. 28(e)(1).....12  
 N.R.A.P. 29.....vi, 2, 12  
 N.R.A.P. 32.....12

**Legislative Materials**

AB 360 (80<sup>th</sup> Sess. 2019).....7  
 SB 198 (81<sup>st</sup> Sess. 2021).....7  
 SB 290 (82<sup>nd</sup> Sess. 2023).....7

## **STATEMENT OF IDENTITY OF AMICUS CURIAE, INTEREST AND AUTHORITY TO FILE**

Pursuant to N.R.A.P. 29(d)(3) amicus curiae Nevadans for the Common Good (“NCG”) states as follows:

Nevadans for the Common Good (“NCG”) is a Nevada nonprofit corporation. NCG is a broad-based network of institutions in the Las Vegas area comprised of faith-based, nonprofit, educational, labor, and civic organizations that come together to develop leaders, identify shared issues affecting our communities, and take action around these issues. NCG’s coalition has been built deliberately to cross the lines of race, religion, neighborhood and political affiliation. NCG takes strong stands on issues affecting families and communities, but remain politically non-partisan. The organization is an affiliate of the Industrial Areas Foundation (IAF), the nation’s oldest and largest leadership development and organizing network. The IAF bases its work on the idea that a healthy democracy requires the active participation of ordinary people.

NCG’s interest in this case is rooted in its long-standing work advocating for consumer protections. In 2018, NCG heard overwhelming concern from their members and congregations that predatory lending was wreaking havoc on their communities. Parishes were expending gross amounts of their community collection funds to help neighbors get off of debt treadmills. Family members and friends were financially drained attempting to help. NCG took up the cause and successfully

supported payday lending reform through the Nevada legislature despite well-funded industry opposition. NCG appears here because the for profit industry and out of state lenders are once again over represented in the record.

Amicus files to provide a voice to the common Nevadan and borrower effected by the policies contained in the initiative. NCG believes that the district court's decision is in error because it fails to understand the interconnectedness of critical debt protections. There is only one bank account for a person in financial crisis that determines if he/she can feed his/her family.

NCG's leader Barbara Paulsen has authorized the filing of this Brief Amicus Curiae.

## **SUMMARY OF ARGUMENT**

Consumer protection laws are critically important. When these laws are not strong or clear enough, unscrupulous actors will adjust, rename, and re-categorize ways to access an individual's bank account to bleed a consumer dry. For Nevadans living paycheck to paycheck who are forced to decide between medication, rent, or food - every door leads to the debt treadmill. The initiative petition has a singular focus of ensuring that Nevadans are better protected. "Payday" loans are known for their predatory attributes. Regulating the predatory nature of a short-term loan requires oversight during its issuance and upon default, or the loan continues to wreak havoc on consumers' lives. The other debt collection protections in S-01-2024 serve the same purpose, limiting the harmful consequences of debt on Nevadans' finances.

After an onslaught of industry opposition, the district court's ruling in this case erroneously found that Initiative S-01-2024 violated the single subject rule because interest rate caps and debt collection protections have no nexus with one another. For a financially insecure family, these consumer protections cannot be disentangled. When there is not enough money to pay the bills, the twin threats of predatory loans and wage garnishment siphon away funds needed for the necessities of life, and leave a trail of financial destruction in their wake.



Following the district court’s decision on April 12, 2024, Kate Feldman and intervener-defendant Stop Predatory Lending NV filed an appeal to challenge the holding. Amicus submits this brief in support of the Appellants Kate Feldman and Stop Predatory Lending NV in accordance with Nevada Rules of Appellate Procedure Rule 29 (N.R.A.P. 29), and urges this Court to reverse the district court. Amicus files to provide a non-industry perspective, the perspective of everyday Nevadans, for whom the amount in their bank accounts and the amount they need to borrow to survive are inextricably one subject.

## **ARGUMENT**

### **I. The Initiative Petition Has A Single Subject of Protecting Nevadans From The Debt Treadmill**

NRS 295.009(1)(a) provides: “Each petition for initiative or referendum must: Embrace but one subject and matters necessarily connected therewith and pertaining thereto; ... .” The lenders seek to confuse NRS 295.009’s single subject requirement by arguing that their business practices are unrelated to each other, divorcing how an entity accesses a person’s bank account from the experience of the individual person. This Court should not accept that distraction for the following reasons.

There is a singular public policy interest in ensuring that Nevadans are not impoverished without a way off the debt treadmill. A 36% rate-cap and expanded debt collection protections are interdependent tools to break the debt treadmill. The

old adage “it’s expensive to be poor” is embodied in the severe power imbalance between a typical consumer, and a high-interest lender.

One such example is a Nevadan who worked in sales, resulting in fluctuating paycheck amounts. When his expenses temporarily surpassed his income, he sought a short-term, high-interest loan. When he could not pay off the triple-digit-interest-rate loan in time, he was issued another one, then another. This is the classic example of the debt treadmill.

By the time he sought legal aid, the consumer had three collection lawsuits filed against him, and a monthly payment obligation ten times the original amount he had sought to bridge. Those lenders filed suit, knowing there was nothing left to collect, to ensure that any additional dollar above the legal protection limit would be taken or garnished.

For this Nevadan, the predatory rate of the loans and the amount left protected in his bank account after garnishing are of course “necessarily connected,” and “functionally related and germane to each other” as required by NRS 295.009(2). For him, there is functionally no difference how a creditor accesses his bank account. For those affected by the initiative petition, the requirements of NRS 295.009(2) are clearly met. There is a nexus in the clear and singular goal of strengthening these protections. The district court failed to recognize how the interest rate cap and debt

collection protection measures of S-01-2024 address the same harsh reality facing many Nevadans.

Further, this Court has held that the possibility that different subsections of an initiative petition could have been brought separately “does not preclude a single initiative that presents them together when they are all germane [...].” *Nevadans for Reprod. Freedom v. Washington*, 140 Nev. Adv. Op. 28, 2024 WL 1688083 (2024). Not only are the contents of the initiative petition germane, but if one is considered without the other, the result and impact on consumers is weakened.

The purpose of NRS 295.009 is both “promoting informed decisions and in preventing the enactment of unpopular provisions by attaching them to more attractive initiatives (*i.e.*, logrolling).” *Las Vegas Taxpayer Accountability Committee v. City Council*, 125 Nev. 165, 176-77, 208 P.3d 429, 436-37 (2009). Here, S-01-2024 is in line with the purpose of the statute as the description is readily understandable as addressing the single issue of providing relief from the spiral of debt that traps Nevadans. Voters will not be confused or deceived by the proposal to better protect Nevadans. Voters deserve the opportunity to directly decide for themselves what constitutes fair protections.

## **II. Interest Rate Caps And Debt Collection Protections Are Interconnected Consumer Protections Needed To Curb “Set Up To Fail” Lending**

The debt treadmill is designed to allow for a continuous inflow of money to the lender. Collection actions serve as a safety recovery net for lenders, and an entry point to new loan customers when other collection actions leave those loan customers desperate. Lenders engage in a “set up to fail” business model, more commonly referred to as predatory lending, that will benefit from the borrower’s inability to afford the loan.<sup>1</sup> Predatory lenders understand that garnishment ensures that they will continue to make money long after the principal amounts loaned are repaid. The exorbitant interest rates ensure high default rates, the cycle of lawsuits for the debts, and garnishments.

However, in a well-functioning loan market, the interests of lenders and borrowers are connected where both sides may benefit.<sup>2</sup> The market should support a space where borrowers have the opportunity to obtain essential goods and services at fair rates, and where lenders have a continuous stream of customers and honorable business opportunities.<sup>3</sup> In credit markets like Nevada, the interest of lenders and

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<sup>1</sup> See CAROLYN CARTER, LAUREN SAUNDERS, & MARGOT SAUNDERS, MISALIGNED INCENTIVES: WHY HIGH RATE INSTALLMENT LENDERS WANT BORROWERS WHO WILL DEFAULT, NATIONAL CONSUMER LAW CENTER 5 (2016).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

borrowers are disconnected. Predatory lending occurs when high interest rates ultimately lead to wage garnishment because the loan was designed never to be repaid, and set up to fail. Fixing Nevada’s predatory lending market requires both the interest rate cap, and the debt collection protections of S-01-2024.

First, limiting interest rates is key to protecting borrowers from predatory “set up to fail” lenders. This consumer protection is essential for protecting unsophisticated borrowers who fall prey to predatory lenders due to life circumstances such as loss of a loved one, a sudden extreme illness, or a car that breaks down on the way to work. As exemplified above, this leads consumers to a “debt treadmill” where consumers can get on but can never leave. High cost loans allow the lender to recover the loan amount early in the loan term.<sup>4</sup> Consumers who eventually default on the predatory loan will often have paid back the initial loan amount in addition to an unconscionable windfall for the predatory lender.<sup>5</sup> A rate cap will put in necessary guidelines for consumers which will force lenders to stop providing loans designed to fail.<sup>6</sup>

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<sup>4</sup> *Id. at 5-6.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

In Nevada, there is no general interest rate cap.<sup>7</sup> A typical “payday loan” (governed by NRS 604A) is named that under the theory that borrowers intend to just bridge to the next payday. Traditionally, consumers grant access to the lenders to charge their bank accounts after their next pay deposits. In Nevada, a typical \$400 payday loan carries a rate of 548% APR.<sup>8</sup> Over 80% of payday loans are rolled over or followed up by another loan within 14 days.<sup>9</sup> Most borrowing involves multiple renewals following an initial loan rather than multiple distinct borrowing episodes.<sup>10</sup> These are all examples of getting on the “debt treadmill.” Of payday loan borrowers,

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<sup>7</sup> It is important to note that the proposed interest rate cap is intentionally overarching because of the very nature of predatory lending. A deep dive of the legislative history surrounding lending laws and especially NRS 604A and related chapters reveals how Nevada law has had to constantly update and adapt to loopholes or “new” loan products designed to evade the existing consumer protections. For example, in 2019, AB 360 sought to cut and paste a lending product from NRS 604A into an entirely new chapter. Had it passed, that product would have offered a “lifeboat” for lending to occur unencumbered from traditional high-interest consumer protections. A similar effort for a new fintech product was brought and failed in 2021 (SB 198), with a similar bill passing in 2023 (SB 290).

<sup>8</sup> CHARLA RIOS, RED ALERT RATES: ANNUAL PERCENTAGE RATES ON \$400, SINGLE-PAYMENT PAYDAY LOANS IN THE UNITED STATES, CENTER FOR RESPONSIBLE LENDING 3 (2023).

<sup>9</sup> KATHLEEN BURKE, JONATHAN LANNING, JESSE LEARY, & JIALAN WANG, CONSUMER FINANCIAL PROTECTION BUREAU, CFPB DATA POINT: PAYDAY LENDING 4 (2014).

<sup>10</sup> *Id.*

nearly half default within two years of their first loan.<sup>11</sup> Of the borrowers who default, nearly half do so within the first two payday loans.<sup>12</sup>

Second, enhanced debt collection protections are critical to protect borrowers from both seeking and trying to break free of predatory “set up to fail” lenders. A recent Consumer Financial Protection Bureau enforcement action described the human emotion regarding wage garnishment efforts of a collection agency: “Over and over, repossession, garnishment, and bankruptcy result. Consumers who lose their vehicles then sometimes lose their jobs and face family difficulties as well. But despite the significant human toll borne by consumers, [collection agency] continues to profit.” *See Complaint in Consumer Financial Protection Bureau and New York v. Credit Acceptance Corporation.*<sup>13</sup> In this case, the creditor predicted that for four out of ten loans, the creditor would not be able to collect the full amount financed, but the creditor would still profit from aggressive debt collection methods. Without debt collection measures like S-01-2024, there is an incentive for companies to first

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<sup>11</sup> SUSANNA MONTEZEMOLO, & SARAH WOLFF, PAYDAY MAYDAY: VISIBLE AND INVISIBLE PAYDAY LENDING DEFAULTS, CENTER FOR RESPONSIBLE LENDING 3 (2015).

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

<sup>13</sup> No. 1:2023cv00038 – Document 64 (S.D.N.Y. 2023); CONSUMER FINANCIAL PROTECTION BUREAU, CFPB AND NEW YORK ATTORNEY GENERAL SUE CREDIT ACCEPTANCE FOR HIDING AUTO LOAN COSTS, SETTING BORROWERS UP TO FAIL (2023).

provide a loan they know the borrower cannot repay and then profit off the borrower with aggressive collection tactics.

S-01-2024 will align borrower and lender incentives. It is a full circle for Nevadans in crisis, like the 66-year-old homecare provider. She was making \$1,600 a month when she took out a payday loan. The lender, having access to her bank account, attempted to withdraw the amount she owed before her paycheck cleared. When the lender knew that the funds did not clear, the lender continued to try. The mounting fees for the declined transactions snowballed until she found herself being sued for collection. The single mom with two daughters who works at a nursing home started with one short-term loan at an exorbitant rate when her living expenses spiked. When she could not complete the terms of the loan, she was offered a new loan to refinance the first. Eventually, the lender filed a lawsuit to garnish her wages.

Similarly, a 63-year old single woman, works full time, but like the majority of Nevadans she has been living paycheck-to-paycheck. She sought a high-interest payday loan to help with an unexpected expense and when she could not afford to repay the lender, she was sued for nonpayment of the debt. The creditor garnished her paycheck and shortly after this garnishment was satisfied, she needed 12 payday loans to cover her expenses. Only one month later, another creditor sued her for deficiency balance owed on a vehicle loan, and she is being garnished on that debt.



Since 2022, this 63-year old Nevadan has faced two separate garnishments, and has needed to continuously incur additional debt just to cover her basic living necessities—including a vehicle and cost of living expenses. Due to the combined effects of high-interest loans and wage garnishment, she is now seeking Chapter 7 bankruptcy. This unfortunate result is exactly the outcome S-01-2024 is intended to prevent, and both aspects of the consumer protections provided by the initiative work together to resolve this all-too-common situation.

Under current law, garnishments do not leave individuals with anywhere near enough money to pay the rent and make ends meet. In fact, a judgment debtor's income can be garnished up to 25%. The cycle starts from having only the bare minimum in a bank account to make ends meet, which cannot be divorced from a consumer's perceived need for a loan, no matter the usurious rates and long-term consequences.<sup>14</sup> Help should not come with unconscionable rates and leave a person

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<sup>14</sup> The district court erroneously found that the initiative violated single subject rule because the garnishment protections apply to court judgments other than those collecting loans. *See page 8*. It's important to note that while a Pew study found that debt collection filings are the most common type of civil cases in Nevada (making up 38.7% of civil cases in 2021)\*, being destitute from wage seizure and debt collection can also be an entry point for the debt treadmill. The point of entry onto the debt treadmill cannot be fractured from the single-subject nature of the circular debt treadmill itself.

\* CASEY CHIAPETTA, DEBT COLLECTION CASES CONTINUED TO DOMINATE CIVIL DOCKETS DURING PANDEMIC, THE PEW CHARITABLE TRUSTS (2023).

with less than they need to survive, which is why S-01-2024 seeks to take this question to the voters.

### **CONCLUSION**

In conclusion, consumers are prey to the predatory lenders. Predatory lending is deceptive, but not complex. At the core of the issue involves one loan that charges outrageous fees throughout the life of the loan: during its issuance and upon default. Addressing the predatory nature of these loans requires consumer protections during the entire life of the loan or the predatory nature of the loan will continue.

The Nevada Supreme Court should consider the narrow focus of the initiative petition from the perspective of the Nevadans the law serves and reverse the district court's holding that the initiative petition violates Nevada's single-subject rule.

## CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Brief complies with the formatting requirements of N.R.A.P. 32(a)(4), the typeface requirements of N.R.A.P. 32(a)(5) and the type style requirements of N.R.A.P. 32(a)(6) because this brief has been prepared in a proportionally-spaced typeface, size 14, Times New Roman.
2. I further certify that this brief complies with the page and type volume limitations of N.R.A.P. 29(e) and N.R.A.P. 32(a)(7) because, excluding the parts of the brief exempted by N.R.A.P. 32(a)(7)(C) it contains 11 pages.
3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, including N.R.A.P. 28(e)(1). I understand that I may be subject to sanctions in the event that the accompanying Brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedures.

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## CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1)(b) and 25(1)(d), I, the undersigned, hereby certify that I electronically filed the foregoing **BRIEF AMICUS CURIAE OF NEVADANS FOR THE COMMON GOOD IN SUPPORT OF APPELLANTS AND OF REVERSAL** with the Clerk of Court for the Supreme Court of Nevada by using the Supreme Court of Nevada's E-filing system on the 9<sup>th</sup> day of May 2024.

I further certify that all participants in this case are registered with the Supreme Court of Nevada's E-filing system, and that service has been accomplished to the following individuals through the Court's E-filing System or by first class United States mail, postage prepaid, at Las Vegas, Nevada as follows:

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