

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 88526

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KATE FELDMAN, and STOP PREDATORY LENDING NV,

Appellants,

v.

NEVADANS FOR FINANCIAL CHOICE, ET AL.,

Respondents.

**NEVADANS FOR FINANCIAL CHOICE AND CHRISTINA BAUER'S
ANSWERING BRIEF**

On appeal from the First Judicial District Court
The Honorable William A. Maddox (Ret.), Senior Judge
District Court Case No. 24 OC 00018 1B c/w 24 OC 00021 1B, 24 OC 00023 1B,
and 24 OC 00029 1B

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Respondent Nevadans for Financial Choice is a Nevada Political Action Committee. Respondent Christina Bauer is an individual. Pisanelli Bice PLLC is the only law firm whose attorneys are expected to appear for Respondents Nevadans for Financial Choice and Christina Bauer on appeal. Pisanelli Bice PLLC was also the only law firm who appeared for Respondents Nevadans for Financial Choice and Christina Bauer below.

DATED this 10th day of May, 2024.

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ISSUES PRESENTED

1. Whether S-01-2024 violates the single-subject rule because its alleged purposes of "consumer debt relief" or "better debt protections" are excessively general such that almost any initiative provision could be made to fall within such a generic purpose?

2. Whether S-01-2024 violates the single-subject rule as it contains several discrete subjects not related or germane to either each other or the Petition's purpose?

3. Whether S-01-2024's inclusion of modifications to several types of financial transactions under the guise of regulating payday loans constitutes logrolling by using the popularity of regulating payday loans to include others?

4. Whether S-01-2024's description of effect is insufficient when it contains false and misleading statements and omits any reference – even general references – to key provisions deleting a host of wage garnishment exemptions and opting Nevada out of major federal banking regulation that Nevada has followed for 40 years?

5. Whether Appellants violated Nevada's constitutional full-text requirement where S-01-2024 includes only some of the proposed statutory changes with the Petition, but does not include redlines for every statutory amendment it purports to make?

I. INTRODUCTION AND SUMMARY OF THE ARGUMENTS

Nevadans' ability to propose ballot initiatives is a leading example of its citizens' democratic power. But because of that potent force, the Nevada Constitution and Legislature impose limitations to ensure each initiative is properly tailored, sufficiently clear, and gives signers adequate information to make an informed decision on whether to sign. In that regard, a petition must only contain a single subject, meaning each provision must be related and germane to each other and the petition's purpose. The petition's purpose cannot be excessively general such that it conceivably covers a wide array of potential provisions. And initiative proponents may not "logroll" the public by combining popular provisions with other provisions so that matters the public otherwise might not support are enacted due to the popularity of one of the petition's provisions. Next, the petition's description of effect must, in a succinct and non-argumentative way, accurately describe what the petition will accomplish if enacted. Finally, the petition must include the full text of the proposed amendments it will enact so that potential signers have sufficient information to make an informed decision whether to sign.

The challenged initiative – S-01-2024 – fails these requirements, as the district court concluded when it enjoined S-01-2024 from being circulated for signatures. Under the single-subject rule, the Petition's purposes of "consumer debt relief" and "better debt protections" are excessively general such that they render the

single-subject rule meaningless. Moreover, two of the distinct aspects of the Petition – an interest rate cap and increased wage garnishment protection – are not related and germane to each other. Removing either does not prevent the other from functioning, as Appellants functionally concede when they proposed S-03-2024, a companion initiative, which seeks to impose only the interest rate cap. And S-01-2024 impermissibly logrolls the public as the Petition highlights a popular provision, regulating so-called "payday" loans, in an attempt to pass a less popular wholesale revision of Nevada laws regarding any loan (and a number of non-loan financial transactions).

Turning to the description of effect, the Petition's description contains misleading and unsupported arguments that the Petition itself does not support. Moreover, the Petition's description is misleading for what it conveniently omits. While noting that it increases wage protection during garnishment proceedings, the description fails to mention, at even a general level, that it eliminates a score of other exemptions beyond wage protections. And despite cursory statements that it prohibits attempts to circumvent the Petition's protections, the description makes no mention of how it would alter the regulatory landscape for Nevada's state-chartered financial institutions to compete with federally-chartered institutions. It omits any disclosure of opting out of the Depository Institutions Deregulation and Monetary Control Act of 1980, which has protected Nevada financial institutions for the last

40+ years. Such careful omissions illustrate the quintessential defective description of effect.

Finally, as to the full-text requirement, S-01-2024 fails. The Petition includes some redlines of its proposed statutory amendments, but not all of them. Thus, it fails the full-text requirement because it does not give signers all the information necessary for a potential signer to make an informed decision of whether to sign the petition. Indeed, S-01-2024's failure here is all the more insidious as its inclusion of some of its proposed redlines creates the impression that the Petition provides all the necessary changes for the signer to review. By misleading signers into thinking the Petition complied with Nevada's full-text requirement, S-01-2024 encourages sweeping changes based on half-truths and misrepresentations.

In light of the three independent grounds supporting the district court's order, this Court must affirm the order enjoining S-01-2024 from being circulated for signatures.

II. STATEMENT OF THE FACTS AND STATEMENTS OF THE CASE

A. The Companion Initiative Petitions.

On January 5, 2024, Appellant Kate Feldman filed a petition for ballot initiative S-01-2024 ("Petition" or "S-01-2024") with the Nevada Secretary of State. (1 AA 8). The Petition proposes several drastic amendments to Nevada law, beginning by enacting a new chapter: "Chapter 604D: Preventing Predatory Payday

and Other Loans Act." (*Id.* at 9). On its face, the Petition focuses on "predatory payday lending," as it is replete with references to payday loans and payday lenders. (*See, e.g., id.* at 9, 11.) The Petition itself asserts three purposes: (1) "combatting predatory payday lending and other high-cost loans," (2) "ensuring that out-of-state lenders cannot flout Nevada law by making payday loans, other loans, or transactions subject to this chapter at unlawful rates to Nevada residents"; and (3) "protecting law-abiding lenders from unfair competition by predatory, out-of-state entities." (*Id.* at 9).

But the Petition casts a broader net than merely targeting payday loans. For example, Section 8 of the Petition provides an illustrative list of financial transactions subject to the Petition. (*Id.* at 11-12.) The Petition applies not only to payday loans, but "[h]igh-interest loans," "[t]itle loans," "[r]efund anticipation loans," "[c]onsumer litigation funding transactions," "[i]ninstallment loans," "[r]etail installment transactions," "[l]oans secured by a life insurance or annuity contract," and "[l]oans made by a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business under the laws of this state." (*Id.*)

Continuing with its broader-than-payday-loans theme, the Petition next purports to have Nevada opt out of the federal Depository Institutions Deregulation and Monetary Control Act of 1980. (*Id.* at 14.) And, not content with broad revisions

to statutes governing financial transactions, the Petition proposes a wholesale rewrite to NRS 21.105 – the statute governing exemptions to writs of execution or garnishment. (*Id.* at 18.) The provision deletes over 14 current exemptions (*id.* at 18-19), yet makes modest tweaks to the remaining exemptions, such as increasing the statutory exemption amount for disposable earnings (*id.* at 20-26).

But none of these changes are detailed in S-01-2024's Description of Effect.

There, the proponents tritely state that:

DESCRIPTION OF EFFECT

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

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

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

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

(*Id.* at 27).

And while the Petition included redlines to some of the statutes it proposes to amend, it did not include every statute or every proposed change to the statutes the Petition would cause. (*Id.* at 8-32.) On January 24, 2024, Feldman filed S-03-2024, the companion initiative to S-01-2024. (3 AA 449.) S-03-2024 proposes to enact the exact same "Prevent Predatory Payday and Other Loans Acts," but removed the provisions regarding changes to exemptions for writs of execution or garnishment contained in the S-01-2024. (*Id.* at 449-65.) Otherwise, the two petitions are substantively identical. (*Compare id., with* 1 AA 8-32.) S-03-2024 is the subject of the pending appeal in Docket 88557.

B. Respondents Brought Several Challenges Based on the Petition's Various Single-Subject Rule Violations, Full-Text Violations, and Its Inadequate Description of Effect.

Respondents Nevadans for Financial Choice and Christina Bauer (collectively, "Nevadans for Financial Choice") filed suit, initially challenging S-01-2024. (1 AA 33.) After Feldman filed the second petition, Nevadans for Financial Choice filed an amended complaint, pursuant to the parties' stipulation, challenging both petitions. (3 AA 413, 491.) Nevadans for Financial Choice's lawsuit was consolidated with similar lawsuits brought by the other respondents, with Nevadans for Financial Choice being the lead case. (*Id.* at 492.)

Nevadans for Financial Choice alleged that both petitions violated the single-subject rule, the full-text requirement, and contained misleading descriptions

of effect.¹ (1 AA 36-40; 3 AA 467-68.) As to S-01-2024 – the subject of this appeal – Nevadans for Financial Choice explained that the Petition violated the single-subject rule by combining two discrete subjects – the interest rate cap and modifications to Nevada law governing wage garnishments. (1 AA 37.) Moreover, it alleged that the various financial transactions are not related or germane to each other, and that focusing on payday loans while slipping in other transactions constitutes logrolling. (*Id.* at 37-39.) Moreover, Nevadans for Financial Choice contended that the intent to opt out of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980" is not related or germane to any of the other provisions in the Petition. (*Id.* at 39.)

As to the description of effect, Nevadans for Financial Choice argued that the description is not a "straightforward, succinct nonargumentative summary" but rather "a campaign advertisement purporting to tout the virtues of an usury law . . . in a misleading and non-forthright manner." (*Id.* at 40.) The description makes several misleading statements, namely that "most consumer loans have no interest rate cap" and that the Petition applies to enumerated transactions "and other loan types dependent on future earnings and income." (*Id.*) Neither contention has any support within the Petition itself. (*Compare id., with id.* at 8-32.)

¹ As the other plaintiffs in the consolidated cases are respondents in this appeal, Nevadans for Financial Choice does not reiterate the arguments those parties made below.

But the Petition's description is also misleading for what it omits. Specifically, while it touches upon increases to two exemptions to wage garnishment, it does not mention the host of exemptions it deletes. (*Id.* at 40.) Further, it contains no mention of the critical opt out of federal banking law. (*Id.*) And, as to the full-text requirement, the Petition fails to include the actual text of all the statutory changes it proposes in violation of the full-text requirement of the Nevada Constitution. (3 AA 467-68.)

Feldman² filed an omnibus opposition to the various respondents' complaints and briefs in support of their complaints. (*Id.* at 504.) As to the single-subject rule, Feldman argued that the Petition did not violate the single-subject rule because the interest rate cap and garnishment modifications are functionally related and germane to its overall purpose of consumer debt relief. (*Id.* at 517-18.) She specifically rejected any requirement under Nevada law that the provisions of the Petition have to be related and germane to **each other**, instead arguing that the provisions need only be related and germane to the Petition's broad purpose. (*Id.* at 520-21.) Finally, Feldman asserted that logrolling did not occur as the provisions of the Petition do

² While the Petition did not note that Stop Predatory Lending NV was the PAC promoting this initiative, the Parties stipulated to add Stop Predatory Lending NV as a party to this litigation. (3 AA 492.) "Feldman" collectively refers to Appellants Kate Feldman and Stop Predatory Lending NV.

not manifest competing policy goals or attempt to enact a controversial proposal by pairing it with more popular measures. (*Id.* at 520).

For her description of effect, Feldman eludes specifics, instead asserting that she "made good-faith efforts to describe the measures proposed in ways that adequately inform the electorate in a brief space." (*Id.* at 524.) At best, Feldman contends that the Petition does not remove any wage garnishment exemptions – despite the substantive deletions contained in Section 17 – because its proposal "just increase[s] existing protections." (*Id.* at 528.) And as to the opt out from federal law, Feldman notes only that the description of effect references how it "prohibit[s] evading the interest rate cap," which supposedly encompasses opting out of a federal banking law despite no explanation in any portion of the Petition as to what the federal law actually does. (*Id.*)

Addressing the full-text requirement, Feldman protested that enforcing the plain language of the Nevada Constitution would be "absurd," leading to "ridiculously long, unnecessarily complex, and incredibly burdensome" petitions. (*Id.* at 531-32.) She further claims that the constitutional requirement is "a novel and extremely dangerous ground upon which to invalidate a proposed initiative measure" that has never been applied to any initiative. (*Id.* at 532.)

C. The District Court Enjoined S-01-2024 From Being Circulated For Signatures.

As to S-01-2024, the district court concluded that Petition "violates Nevada's single-subject rule in several respects." (4 AA 769.) It "embraces at least two disparate subjects" by "purporting to 'establish[] maximum interest rates charged to consumers, and shield[] more of people's savings and earnings from garnishment than under current law.'" (*Id.* (alterations in original).) Specifically, "[i]mposing a maximum interest rate on lenders and others is not 'functionally related and germane to' shielding a judgment debtor's savings and earnings from garnishment." (*Id.* at 770.) Similarly, "[t]he shielding of debtor assets in the collection of judgments applies beyond those arising out of the proposed 'Preventing Predatory Payday and Other Loans Act.'" (*Id.*)

Next, the court recognized that "[a] judgment debtor may be subject to garnishment for any number of reasons, including for unpaid debts that may or may not be subject to any interest rate at all," and thus, "[t]o the extent the Proponents claim the Petition's overarching purpose is to prevent 'the lending of money at unconscionable or exorbitant rates of interest,' the Proponents' argument demonstrates that the Petition embraces multiple subjects, contrary to NRS 295.009's single-subject requirement." (*Id.*)

Further, the court recognized that Feldman's asserted purposes for the Petition – "better debt protections" – such a purpose is excessively general such that "the

general scope of that goal could plausibly relate to any proposal on some level." (*Id.* at 770-71.) And, finally, the court recognized that the proposed portions of an initiative must be related and germane to each other, which the Petition here fails to do. (*Id.*) As such, the court enjoined S-01-2024 from being circulated for signatures. (*Id.* at 772.) Because the court resolved the challenge on the single-subject rule, it did not "reach the Plaintiffs' remaining arguments." (*Id.* at 771.)

III. ARGUMENT

A. Standard of Review.

Because the district court resolved this petition challenge absent any factual dispute, this Court reviews *de novo* the district court order enjoining S-01-2024. *Helton v. Nev. Voters First PAC*, 138 Nev., Adv. Op. 45, 512 P.3d 309, 313 (2022). "The party challenging the initiative petition bears the burden of demonstrating the proposed initiative is clearly invalid." *Id.* Preelection challenges are limited to challenges concerning, among other things, whether the petition violates the single-subject rule, presents an insufficient description of effect, or does not satisfy the full text requirement. Nev. Const. art. 19, § 3; *see also Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 883-84, 141 P.3d 1224, 1228 (2006). As discussed below, S-01-2024 fails on all three grounds.

B. S-01-2024 Violates the Single-Subject Rule.

1. Legal standard.

Under the single-subject rule, proposed ballot initiatives must "[e]mbrace but one subject and matters necessarily connected therewith and pertaining thereto." NRS 295.009(1). An initiative complies with the single-subject rule if each provision "is functionally related and germane *to each other* and the initiative's purpose or subject." *Helton*, 512 P.3d at 314 (emphasis added); *see also* NRS 295.009(2) (providing that an initiative satisfies the single-subject rule "if the parts of the proposed initiative . . . are functionally related and germane to each other in a way that provides sufficient notice of the general subject of, and of the interests likely to be affected by, the proposed initiative."). The single-subject rule "promot[es] informed decisions" and "prevent[s] the enactment of unpopular provisions by attaching them to more attractive proposals or concealing them in lengthy, complex initiatives (*i.e.*, logrolling)." *Las Vegas Taxpayer Accountability Comm. v. City Council of Las Vegas (LVTAC)*, 125 Nev. 165, 176-77, 208 P.3d 429, 436-37 (2009); *see also Nevadans for Reprod. Freedom v. Washington*, 140 Nev., Adv. Op. 28, ___ P.3d ___, 2024 WL 1688083, at *4 (2024).

To resolve a single-subject challenge, this Court "must first determine the initiative's purpose or subject and then determine if each provision is functionally related and germane to each other and the initiative's purpose or subject."

Helton, 512 P.3d at 314. An initiative proponent "may not circumvent the single-subject rule by phrasing the proposed law's purpose or object in terms of 'excessive generality.'" *LVTAC*, 125 Nev. at 181, 208 P.3d at 439 (quoting *Harbor v. Deukmejian*, 742 P.2d 1290, 1303 (Cal. 1987)).

2. *S-01-2024's purpose is excessively general, and thus violates the single-subject rule.*³

Assuming without deciding that S-01-2024's purpose is "better debt protections, or "consumer debt relief," AOB 13 (emphases omitted), the district court correctly concluded that purpose is excessively general, and thus, a violation of the single-subject rule, (4 AA 768-72).

An initiative's purpose is excessively general when it is "so broad that a virtually unlimited array of provisions could be considered germane thereto and joined in [the] proposition." *Chem. Specialties Mfrs. Ass'n, Inc. v. Deukmejian*, 278 Cal. Rptr. 128, 133 (Ct. App. 1991), *cited approvingly in LVTAC*, 125 Nev. at 181, 208 P.3d at 439-40 (adopting the excessive generality requirement as part of Nevada's single-subject rule analysis). Thus, a petition seeking to provide voters "with greater input into the City's redevelopment" fails as "voter approval" is an

³ While Appellants begin with a related-or-germane-to analysis, this Court's caselaw requires the determination of the petition's purpose before the related-or-germane-to analysis may be conducted. *Helton*, 512 P.3d at 314. Thus, Nevadans for Financial Choice first address S-01-2024's purpose before moving to the related-or-germane-to analysis.

"excessively general" purpose. *LVTAC*, 125 Nev. at 181, 208 P.3d at 440. Similarly, a petition proposing to make statutory amendments to the state's budgeting process violated the single-subject rule as its purpose – "Fiscal affairs" – was excessively general because it "encompass[es] any substantive measure which has an effect on the budget" and "[t]he number and scope of topics germane to 'fiscal affairs' in this sense is virtually unlimited." *Harbor*, 742 P.2d at 1303-04, cited approvingly in *LVTAC*, 125 Nev. at 181, 208 P.3d at 439-40.

Here, like *LVTAC* and *Harbor*, S-01-2024's purpose is excessively general and overbroad. Consumer debt relief and better debt protections have no limiting feature – indeed, like *Harbor*, "[t]he number and scope of topics germane to" better debt protection or consumer debt relief are virtually limitless. Potential topics could include capping interest rates on loans, limiting the ability to garnish property to collect on debt, include mass debt forgiveness of loans, or revamp the regulations of lenders and collectors to eliminate or curtail the availability of certain types of debt. Such an excessively general purpose is the quintessential single-subject violation. See *LVTAC*, 125 Nev. at 181-82, 208 P.3d at 440; *Harbor*, 742 P.2d at 1303-04; accord *Wagner v. Evnen*, 948 N.W.2d 244, 254-55 (Neb. 2020) (invalidating a proposed initiative for "cannabis legalization" that effectively included at least eight actual subjects under the single-subject rule because the rule cannot be

"circumvented" by selecting a purpose that is "so broad" as to evade "meaningful review").

Appellants' reliance on *Helton*, AOB 18, is misplaced as *Helton* supports the district court's excessive generality conclusion. In *Helton*, a divided Court recognized that the initiative's purpose was "the framework by which specified officeholders are presented to voters and elected." 512 P.3d at 314 (emphasis omitted). Such a purpose, the *Helton* majority explained, was not excessively broad because it "is distinctly different from, for instance, the mechanics of how voters vote, which would include early voting, absentee ballots, machine voting, and paper ballots, among other things." *Id.* (emphasis omitted). Because the *Helton* petition's "provisions only apply to the framework of the election of partisan officeholders," it was not excessively broad. *Id.* In other words, unlike *LVTAC* or *Harbor*, only a narrow subset of proposals would fall within the *Helton* petition's purpose.

However, S-01-2024's purpose of consumer debt relief or better debt protections have no similar limitation. Indeed, S-01-2024's purpose captures not only the framework of consumer debt relief or better debt protections, but also the various mechanics of those areas. As such, S-01-2024's purpose is excessively general in violation of the single-subject rule.⁴

⁴ Appellants' errant suggestion that *Nevadans for Reproductive Freedom* similarly supports their argument, AOB 18), fails as a matter of law. *Nevadans for Reproductive Freedom* did not involve an excessive generality challenge; there, the

3. *S-01-2024's provisions are not functionally related and germane to each other and the petition's purpose.*

Alternatively, should this Court conclude that S-01-2024's purpose is not excessively general, the petition still fails as its provisions are not functionally related or germane to each other and the Petition's overall purpose, as the district court concluded. (4 AA 768-71).⁵ As this Court has explained, multiple

petition challengers asserted that the "broad idea of 'reproductive freedom' as the petition's single subject results in 'logrolling.'" 2024 WL 1688083, at *4. As such, *Nevadans for Reproductive Freedom* offers no guidance on the excessive generality analysis.

⁵ As an initial matter, Appellants are judicially estopped from contending that S-01-2024's provisions are related and germane to each other. Judicial estoppel applies when:

(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position . . . ; (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.

Delgado v. Am. Family Ins. Grp., 125 Nev. 564, 570, 217 P.3d 563, 567 (2009).

Before the district court, Appellants did not argue that S-01-2024's provisions were related to and germane to each other; instead, they argued that "[n]othing in law or the Nevada Supreme Court's jurisprudence requires each provision of an initiative to be functionally related and germane to *each other*; rather, they need only be functionally related and germane to the initiative's overall policy goal." (3 AA 520 (emphasis in original).) While this argument was unsuccessful as to S-01-2024, the district court accepted it regarding S-03-2024 – the companion initiative that the parties argued to the district court in the same briefing regarding S-01-2024. (4 AA 777.) As such, Appellants took inconsistent positions in judicial proceedings that obtained a successful result in the district court. Appellants cannot change their position now. Accordingly, because Appellants cannot assert that

provisions of an initiative are related and germane to each other when the provisions are essential to each other's ability to function. *Nevadans for Reprod. Freedom*, 2024 WL 1688083, at **3-4; *Helton*, 512 P.3d at 315. *Helton* and *Nevadans for Reproductive Freedom* are illustrative.

In *Helton*, the initiative contained two proposed interrelated sections. 512 P.3d at 312. The first affected Nevada's primary elections for partisan offices, providing that "any voter could vote in the primary, regardless of party affiliation, and the top five candidates from the primary would proceed to the general election." *Id.* at 312-13. The second "address[ed] general elections" and "would change those elections to a ranked-choice voting format." *Id.* at 313. In rejecting a germaneness challenge, this Court explained that "the effectiveness of one change would be limited without the other." *Id.* at 315. In fact, this Court recognized that the provisions would be functionally meaningless without each other:

For example: absent the open-primary change, the ranked-choice-voting change would have little practical effect because the closed primary system makes it more likely that voters would have only two candidates to choose from in the general election . . . such that voters would have no need to rank the general election candidates beyond their first choice.

S-01-2024's provisions are related to and germane to each other (as well as the petition's goal), the district court's order should be affirmed. Regardless, *Nevadans for Financial Choice* nonetheless address the merits of Appellants' newly conceived argument.

Id. As such, the provisions were functionally related and germane to each other **and** the petition's purpose. *Id.*

Nevadans for Reproductive Freedom reiterated that the provisions must be interrelated to each other to satisfy the single-subject rule. There, the proposed initiative contained several sections. 2024 WL 1688083, at **1-2. The first section described the right to reproductive freedom, while the second section permitted the state to regulate abortions after fetal viability in certain circumstances. *Id.* at *1. The third and fifth sections forbade the State from "penalizing or prosecuting a pregnant individual based on the outcome of a pregnancy or penalizing" an individual for assisting in the exercise of the right to reproductive freedom. *Id.* Section four provided a similar right to health care providers, while section six notes that the initiative did not limit rights to equality or equal protection. *Id.* at **1-2. In rejecting a germaneness challenge, this Court explained that all of the sections are necessary to each other to create a fundamental right to reproductive freedom. *Id.* at **3-4. Like *Helton*, the absence of one of the sections could impair the function of the others. *Id.*

Here, however, the provisions of S-01-2024 share no interrelationship. The crux of Appellants' argument is that the provisions "[i]n combination . . . provide consumers with an improved framework of protections on both the front and back ends of the debtor experience." AOB 14. In other words, S-01-2024 provides two

separate avenues to provide "better debt protections" – a front-end method to limit interest rates and a back-end method to limit garnishments. *See id.* But neither provision relies on the other to function – an interest rate cap is still as effective at capping interest regardless of any limits on debt collection.⁶ Similarly, increasing limitations on debt collection protects more of a debtor's property regardless of the interest rate the debtor pays. As such, the absence of one provision does not render the other provision to "little practical effect."

Appellants' cursory characterization of *Helton* misses its core reasoning. The provisions were not germane to each other because they "had a functional relationship to one another in achieving the purpose of the initiative generally" or otherwise advance "the overall 'policy changes' that the petition would have adopted," AOB 15-16; rather, as explained above, the *Helton* initiative's provisions were germane to each other because the absence of one provision would impede the other provisions and the purpose. 512 P.3d at 315. Similarly, *Nevadans for Reproductive Freedom* does not stand for the proposition that a petition proponent may stuff an initiative with tangentially related provisions, AOB 16, but rather that

⁶ Indeed, Feldman proposed S-03-2024, which is identical minus the garnishment protection provisions, as Feldman concedes. AOB 1-2 ("SPLNV filed a second initiative, S-03-2024, which pursued only the interest rate cap. The measures were identical except for the excision of the asset-protection that had featured in the original Petition." (internal citation omitted)). Thus, it is clear that the two provisions in S-01-2024 are not needed to make each other function.

a petition's provisions are functionally related and germane to each other if the absence of one provision would render the other provisions meaningless, *Nevadans for Reprod. Freedom*, 2024 WL 1688083 at **3-4.

Here, the separate provisions of S-01-2024 functions independently – none of the various provisions is fundamental to the other's effectiveness.

4. *S-01-2024 violates the single-subject rule as its multiple provisions constitute logrolling.*

Logrolling occurs "when two or more completely separate provisions are combined in a petition, one or both of which would not obtain enough votes to pass without the other." *Helton*, 512 P.3d at 315 (quoting *Nevadans for the Protection of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 922, 141 P.3d 1235, 1254 (2006)). It also occurs "when an unpopular provision is concealed in a lengthy, complex initiative." *Nevadans for Reprod. Freedom*, 2024 WL 1688083, at *4.

Here, S-01-2024's provisions constitute logrolling as the proponents – admittedly – attempt to impose a sweeping usury provision under the guise of regulating payday loans. (3 AA 509). The focus of S-01-2024 is nominally payday loans; in fact, the petition proposes creating a new chapter of Nevada law: "Chapter 604D: Preventing *Payday* and Other Loans Act." (1 AA 9 (emphasis added).) But the initiative is far broader than payday loans. While it almost always leads with boogie man "payday loans" or "payday lenders," the Petition similarly captures at least 10 distinct types of financial transactions and a catch-all provision

applying to any "loans made by a bank, savings bank, savings and loan association, or credit union organized, chartered, or holding a certificate of authorization to do business under the laws of the State." (*Id.* at 10-14.) As such, by imposing a sweeping usury limit under the guise of regulating payday loans, S-01-2024 attempts to logroll the public. *Cf. Nevadans for Reprod. Freedom*, 2024, 1688083, at *4 ("Additionally, the initiative petition does not tie a highly attractive proposal to one that may struggle to get votes. Notably, Washington does not identify a popular provision that NRF is using to hide a less popular provision.").

C. S-01-2024's Description of Effect is Wholly Deficient.

Appellants' arguments – that S-01-2024's description of effect is adequate because it (1) "contains . . . the same language found adequate as to the second-filed initiative" and (2) "a short description of the expanded asset protections against seizure for debts" that is not argumentative, AOB 19-20, fail as a matter of law.

Each petition must include a description of the initiative's effect that is "not more than 200 words." NRS 295.009(1)(b). The description of effect "must be a straightforward, succinct, and nonargumentative summary of what the initiative is designed to achieve and how it intends to reach those goals." *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2003). While a description of effect "cannot constitutionally be required to delineate every effect that an initiative will have," the proponent must still supply a description that

"provides an expansive view of the initiative" that properly summarizes the initiative's goal and how it intends to do so. *Id.* at 37-38, 49, 293 P.3d at 876, 883-84.

As an initial matter, Appellants attempt to rely on the district court's approval of S-03-2024's – the companion initiative – description of effect to justify a cursory review of S-01-2024's description of effect. AOB 20-21. However, Respondents Nevadans for Financial Choice and Christina Bauer (as well as some of the other respondents) have appealed the district court's order approving S-03-2024. *See* Docket 88557. Thus, as Appellants attempt to rely on S-03-2024's description of effect (and, accordingly, obtain a favorable ruling to use in the appeal in Docket 88557), this Court will need to resolve this appeal in conjunction with Docket 88557. Appellants transparently seek to short-circuit the appellate process in this docket to obtain a potentially preclusive ruling in Docket 88557.

Turning to the merits, S-01-2024's description of effect is fundamentally flawed as it misleads the voters of what the Petition's aims are and how it will accomplish those goals. The description of effect claims that "most consumer loans have no interest rate cap" without citing any basis for that conclusion. (1 AA 27). It next claims that S-01-2024 will apply to certain transactions "and other loan types dependent on future earnings and income." (*Id.*). Yet one need only to peruse S-01-2024 to see that it does not contain any provision limiting its application to loans "dependent on future earnings and income." This description is misleading as

it contains false information. *Cf. Educ. Initiative*, 129 Nev. at 49, 293 P.3d at 884 ("The information contained in the description is neither deceptive nor misleading, as it is substantively correct and does not misrepresent what the initiative will accomplish or how it will achieve those goals.").

Moreover, not only does the description contain false statements, but it also omits critical information. This description does not disclose that it completely deletes a whole host of exemptions from garnishment that currently exist under NRS 21.105. (1 AA 18-20) (deleting all exemptions). Nor does it explain that it is changing 40 years of Nevada law that has leveled the playing field between state-chartered financial institutions and federally-chartered institutions. Since its enactment in 1980, Nevada has not deviated from the Depository Institutions Deregulation and Monetary Control Act of 1980, which provides competitive parity between state- and federally-chartered financial institutions, unless a state chooses to opt out of that parity. Do Nevada voters really want to alter that competitive landscape for state entities? They would never know that is the effect because the Petition's proponents conceal the change and what it does. Indeed, do the proponents of this Petition even understand the purpose of that federal legislation, and why Nevada has not opted out of its provisions for the last 40+ years? If the proponents do know, then their description is intentionally deceptive. If they do not know, then their description is negligently misleading. Either way, omitting any reference to

such critical information is not "an expansive view of the initiative," *Educ. Initiative*, 129 Nev. at 49, 293 P.3d at 884, nor a "straightforward, succinct, and nonargumentative summary" of the initiative, *Helton*, 512 P.3d at 316.⁷

D. S-01-2024 Violates the Full-Text Requirement.

Under Nevada law, each "initiative petition shall include the full text of the measure proposed." Nev. Const. art. 19, § 3. Such a requirement serves to give each potential signer the ability and "opportunity before signing to read the full text of the act or resolution upon which the initiative or referendum is demanded." NRS 295.0575(6). To satisfy the full-text requirement, the initiative must include the full text of the statutes it purports to enact, including redlines to the existing statutory scheme. *We Care-Santa Paula v. Herrera*, 42 Cal. Rptr. 3d 577 578 (Ct. App. 2006) (collecting cases where various courts found initiatives or referendums invalid because the petitions "referenced portions of the general plan by heading and chapter number without including any part of the text" or "referred to the ordinance to be repealed only by number and title").

⁷ As such, this Court must affirm the district court's order enjoining S-01-2024. *University of Nev. v. Tarkanian*, 110 Nev. 581, 603, 879 P.2d 1180, 1194 (1994) (holding that the prevailing party on appeal "may defend the judgment in his favor with any argument supported by the record," "even if his rationale differed from that of the district court").

Here, while S-01-2024 includes some of its proposed additions and deletions to the Nevada Revised Statutes, it does not include every statute it purports to amend or delete. (*See generally* 1 AA 8-32). For example, S-01-2024 purports to extend the reach of the new Chapter 604D to banks and other financial institutions. (*Id.* at 11-12). Such a change would compel the amendment or repeal of a host of statutory provision – such as NRS 662.015, 672.370, 672.460, 672.710, 673.225, 673.3272, and 677.730 – without including any of those provisions and redlines to allow the voters to understand the initiative fully before signing it. *Mervyn's v. Reyes*, 81 Cal. Rptr. 2d 148, 151 (Ct. App. 1998) ("The purpose of the full text requirement is to provide sufficient information so that registered voters can intelligently evaluate whether to sign the initiative petition and to avoid confusion."). The failure to include the full text of the initiative is even more glaring here, as the incomplete inclusion of some of the proposed additions and some of the proposed deletions – but not all of them – may mislead potential signers as to the scope of the initiative. As such, S-01-2024 violates the full-text requirement. Accordingly, this Court must affirm the district court order.

E. Appellants' Argument Regarding "Other Issues Raised By Respondents Below" Improperly Characterizes the Record and Must be Disregarded.

Appellants raise a catch-all argument that "[t]he district court properly found [several other arguments made by the different respondents] to be without merit."

AOB 22. However, this argument misstates the record. In the order granting Respondents' various challenges to S-01-2024 – the order Appellants actually appealed – the district court concluded that S-01-2024 violated the single-subject rule. (4 AA 771.) It specifically did "not reach the Plaintiffs' remaining arguments" "[i]n light of [its] conclusion that the Petition violates the single-subject rule." (*Id.* at 771 n.1.) The order Appellants cite for their argument is the order regarding S-03-2024, which is on appeal in Docket 88557. (*See id.* at 780-81 ("declar[ing] that Initiative Petition S-03-2024 is legally sufficient")). As such, the denial of arguments as to S-03-2024 has no effect or bearing on the arguments pertaining to S-01-2024, especially when the district court expressly stated it did not reach any argument beyond the single-subject rule.

Moreover, Appellants reference to the district court's denial of other arguments – without citation to any authority or any analysis of their own – need not be considered by this Court as the failure to do more than note the existence of other arguments is not a cogent argument in favor of reversal. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that this Court need not consider claims that are not cogently argued or supported by citations to authority); *cf.* NRAP 28(e)(2) ("Parties shall not incorporate by reference briefs or memoranda of law submitted to the district court or refer the Supreme Court

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Office Word 2007 in size 14 font in Times New Roman.

I further certify that I have read this brief and it complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains approximately 6,422 words.

Finally, I hereby certify that 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, in particular NRAP 28(e)(1), which requires that every assertion in this brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the

