

**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,

Respondents.

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RESPONDENT DAILYPAY, INC.'s ANSWERING BRIEF

HOLLAND & HART LLP
J. Malcolm DeVoy (11950)
Matthew Morris, Esq. (15068)
4570 Kietzke Lane Ste. 100, Reno, NV 89051
Attorneys for Respondent DailyPay Inc.

HOLLAND & HART LLP
4570 KIETZKE LANE STE 100
RENO, NV 89051

NRAP 26.1 DISCLOSURE

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that there are no persons or entities as described in NRAP 26.1(a) that must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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

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

DATED this 10th day of May 2024.

HOLLAND & HART LLP



J. Malcolm DeVoy (11950)
Matthew Morris, Esq. (15068)
4570 Kietzke Lane Ste 100
Reno, NV 89051

*Attorneys for Respondent
DailyPay Inc.*

HOLLAND & HART LLP
4570 KIETZKE LANE STE 100
RENO, NV 89051

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JURISDICTIONAL STATEMENT

This Court has jurisdiction over the instant appeal under NRAP 3A(b)(1), as it is an appeal from a final order resolving all claims presented to the district court, and pursuant to NRAP 3A(b)(3), as it is an appeal from an order granting injunctive relief in a petition-related challenge under NRS 295.061. The district court entered its final order on April 16, 2024, and Appellants filed their notice of appeal on April 17, 2024, within NRAP 4(a)(1)'s prescribed 30-day period.

ROUTING STATEMENT

Under NRAP 17(a)(2), this appeal is presumptively retained by this Court because it involves a ballot or election question.

STATEMENT OF THE ISSUES ON APPEAL

- I. Whether the District Court properly invalidated and enjoined Petition S-01-2024 on single-subject grounds under NRS 295.009(1)-(2).
- II. Whether Petition S-01-2024's description of effect is misleading, argumentative, and otherwise legally deficient under NRS 295.009(1)(b).
- III. Whether Petition S-01-2024 is deficient for failing to include the full text of SB 290 (Nev. 2023) which the Petition seeks to effectively repeal.

INTRODUCTION

The right to propose, amend, and repeal laws at the ballot depends existentially upon procedural safeguards, chief among which is NRS 295.009's single-subject rule that "prevent[s] voter confusion and promote[s] informed decisions." *Helton v. Nev. Voters First PAC*, 138 Nev. Adv. Op. 45, 512 P.3d 309, 316 (2022). The challenged Petition blatantly flouts these protections. It exalts putative aims of "consumer protection" over statutory rules that prohibit misusing a ballot measure as a Trojan horse. By its very text and description, the Petition will accomplish the opposite of what it asks voters to approve. Far from "preventing predatory lending" it will actually restrict and punish financial services that are neither "predatory" nor "lending," rendering such services difficult or impossible to access for the Nevadans who need them most.

To attract support, the Petition entices signatories with a pledge that it will "automatically protect" thousands of dollars in their personal bank accounts while supposedly targeting "predatory out-of-state lenders." Hidden beneath the surface of these enticing allures, the Petition's fine print effectively repeals a Senate Bill that makes it easier for hardworking Nevadans to access their own money, sooner than a

regular payday cycle otherwise allows. The Petition quietly seeks to repeal legislation passed almost unanimously after consumer advocates testified that the bill creates “an alternative” to the very high-interest, punitive products the Petition ostensibly targets.

If the single-subject rule means anything, it must mean that a Petition claiming to do one thing while doing precisely the opposite cannot pass muster under NRS 295.009(1)-(2). Otherwise, there is no right to “informed decision making” in the context of ballot measures. This Petition’s excessively generalized subject matter, and its functionally unrelated components violate NRS 295.009(1)-(2)’s rules and undermine an informed electorate. The district court perceived these deficiencies, invalidated the Petition, and protected the right to meaningfully engage in the petition process. This Court should affirm.

STATEMENT OF THE CASE & PROCEDURAL HISTORY

SB 290 (Nev. 2023) and Earned Wage Access Services.

Senate Bill 290 (“SB 290”) became law during the 2023 Nevada Legislative Session and authorized the licensure and regulation of earned wage access services in Nevada. II Appellants’ Appendix (AA) 336-363. SB 290 defines “earned wage access” services as “the delivery to a user of

money that represents earned but unpaid income.” SB 290, Sec. 7(1)-(2); II AA 339. The bill declares that earned wage access services are not loans or credit products, must not charge interest or late fees, and that earned wage access service providers are neither lenders nor subject to Nevada’s lending laws. SB 290, Secs. 31-33; II AA 337, 354-355. SB 290 mandates that earned wage access services are non-recourse financial products, *i.e.*, earned wage access service providers may not “charge a late fee, deferral fee, interest or any other penalty or charge for failure to pay[.]” II AA 354. DailyPay is an employer-integrated earned wage access service provider and partners with hundreds of employers to provide earned wage access services to thousands of Nevada workers. I AA 71.

The Petition’s “Preventing Predatory Payday and Other Loans Act.”

Appellants filed Petition S-01-2024 (the “Petition”) on January 5, 2024, proposing to add “a new Chapter to be designated [NRS] Chapter 604D,” enacting the “Preventing Predatory Payday and Other Loans Act.” I AA 9. The Petition ostensibly “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.” I AA 27.¹ Despite its title, the Petition also applies to non-loan, non-recourse services, such as earned wage access services, by virtue of its expansive definition of “loan,” which includes (among other things) “any...agreement for the payment of unpaid wages...whether earned, to be earned, or contingent upon future earnings....made in consideration for...the payment of money to...the person earning or receiving....the wages[.]” I AA 10; IV AA 806.

Despite its title, the Petition applies not just to “lenders,” but to a variety of entities that have nothing to do with lending, including earned wage access service providers and the employers and payroll servicers with whom they partner. The Petition’s scope reaches such non-lenders by virtue of its expansive application to “any payday lender or other person that...[m]arkets, offers, brokers, arranges, facilitates, makes or services a loan as defined in Section 5 [of the Petition],” and “any payday lender or other person that...[i]s deemed to be subject to this chapter...or

¹ Appellants also filed a Second Petition, Initiative Petition S-03-2024, that DailyPay and others have challenged and that is not at issue in this appeal. As Appellants acknowledge, “this present appeal only concerns the first Petition, Initiative Petition S-01-2024, which the district court determined violated Nevada’s single-subject rule.” AOB 6.

is engaged in a transaction that is in substance a disguised loan or other transaction subject to this chapter[.]” I AA 10-11.

The Petition explicitly targets SB 290 with a limited prospective application of its proposed interest cap, which would not apply to earned wage access service providers until January 1, 2030. I AA 14. The prospective application is limited only to the proposed interest rate cap, and applies exclusively to “entities licensed” as service providers—that is, it excludes third-party entities with whom employer-integrated service providers (like DailyPay) must partner to offer services to Nevada workers. I AA 14. Such employers and payroll servicers are integral to providing earned wage access services under SB 290’s definition of “employer-integrated earned wage access services.” III AA 339. With the limited exception for its interest rate cap, the rest of the Petition will apply immediately to DailyPay and others. Thus, employer-integrated earned wage access service providers and the employers and payroll services with whom they partner, will be subject to civil penalties, restitution damages, fines ranging from \$250 to \$1,000 per violation, as well as “any other legal or equitable relief that the court deems appropriate in addition to any other remedies provided at law.” I AA 14.

***DailyPay and Others Challenge the Petition on
Single-Subject Grounds.***

On January 26, 2024, Respondents Nevadans for Financial Choice and Christina Bauer filed a Complaint for Declaratory and Injunctive Relief challenging the Petition's legal sufficiency pursuant to NRS 295.061. I AA 1-67. DailyPay filed its Complaint for Declaratory and Injunctive Relief challenging both Petitions on January 29, 2024. I AA 68-144. DailyPay's Complaint challenged both Petitions' compliance with NRS 295.009's single-subject and description-of-effect requirements, as well as the Petitions' compliance with constitutional rules concerning fiscal impacts and requiring an initiative or referendum to include the full text of the measure proposed. I AA 79-87. Also on January 29, 2024, Respondents Preferred Capital Funding-Nevada LLC and Alliance for Responsible Consumer Legal Funding filed a Complaint for Declaratory and Injunctive Relief challenging both Petitions. I AA 145-204.

The parties to the underlying actions stipulated to consolidating the various filed suits into one action for purposes of efficiency and to promote judicial economy. III AA 470-479. The parties also stipulated to the intervention of Appellants Ms. Feldman and Stop Predatory Lending NV.

Id. The parties submitted briefing, and the district court held a hearing on March 22, 2024. IV AA 601-762.

The District Court Holds the Petition Violates NRS 295.009’s Single-Subject Rule.

On April 15, 2024, the district court invalidated the Petition on single-subject grounds. IV AA 803-812. The district court held the Petition improperly “embraces at least two disparate subjects in purporting to ‘establish[] maximum interest rates charged to consumers, and shield[] more of people’s savings and earnings from garnishment than under current law.’” IV AA 809. Under NRS 295.009, the court reasoned “[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. Nor is shielding a judgment debtor’s savings from garnishment a matter that is ‘necessarily connected’ with and pertaining to ‘Preventing Predatory Payday and Other Loans.’” IV AA 809-810. The district court concluded the Petition “join[s] multiple discrete and disparate subjects together into a single Petition, in violation of NRS 295.009’s single-subject rule.” IV AA 810.

The district court also held that Appellants, as proponents of the Petition, “articulated an excessively generalized subject matter

that...would effectively nullify the single-subject rule,” and, that “the general scope of [the Petition’s purported goal] could plausibly relate to any proposal on some level.” IV AA 810-811. The district court concluded that “[w]ere such an excessively generalized subject permissible, there would be no need for the single-subject rule.” IV AA 811. This appeal timely followed. IV AA 830-833.²

SUMMARY OF THE ARGUMENT

The district court correctly determined that the Petition violates NRS 295.009’s single-subject requirement, because it combines multiple disparate subjects that are not functionally related to each other into a single proposed measure, and because the Petition’s Proponents proffered a supposed single subject that is excessively generalized. IV AA 808-811.

The district court was correct to enjoin the Petition as a matter of law, and this Court should affirm.

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² The district court noted, but declined to address, Plaintiffs’ remaining arguments, including their “challenges to the Petition’s description of effect, the Petition’s purported fiscal impacts, and the Petition’s arguable referendum on Senate Bill 290’s earned wage access provisions.” IV AA 811.

ARGUMENT

I. Standard of Review

This case concerns the interpretation and enforcement of NRS 295.009(1)-(2)'s single-subject rule as applied to Initiative Petition S-01-2024 (the "Petition"). "Questions of law, including questions of constitutional interpretation and statutory construction, are reviewed de novo." *Peck v. Zipf*, 133 Nev. 890, 892, 407 P.3d 775, 778 (2017); *see also Helton v. Nev. Voters First PAC*, 138 Nev. Adv. Op. 45, 512 P.3d 309, 313 (2022) (applying de novo review to a petition challenge). "This Court will affirm a district court order reaching the correct result, even if for different reasons." *No Solar Tax PAC v. Citizens for Solar and Energy Fairness*, 132 Nev. 1012 (Aug. 4, 2016) (Unpublished) at *1 n.2 (citation omitted).

II. The District Court Properly Invalidated the Petition on Single-Subject Grounds under NRS 295.009.

The district court correctly held the Petition violates NRS 295.009(1)-(2)'s single-subject requirement. A "petition for initiative or referendum must...[e]mbrace but one subject and matters necessarily connected therewith and pertaining thereto." NRS 295.009(1)(a). A petition meets this statutory single-subject requirement if its provisions

“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.” NRS 295.009(2).

“The single-subject requirement helps both in promoting informed decisions and in preventing 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 Cmte. v. City Council of City of Las Vegas*, 125 Nev. 165, 176-77, 208 P.3d 429, 436-37 (2009) (quoting *Nevadans for Prop. Rights v. Sec’y. of State*, 122 Nev. 894, 905, 141 P.3d 1235, 1242 (2006)). “NRS 295.009(2) plainly describes the standard that must be used in determining whether an initiative is comprised of more than one subject: each initiative’s parts must be ‘functionally related’ and ‘germane’ to each other and the initiative’s purpose or subject.” *Id.* at 180, 208 P.3d at 439 (citing *Nevadans for Prop. Rights*, 122 Nev. at 906-07, 141 P.3d at 1243). “To determine the initiative’s purpose or subject, this Court looks to its textual language and the proponents’ arguments.” *Id.* at 180, 208 P.3d at 439 (citing *Nevadans for Prop. Rights*, 122 Nev. at 907, 141 P.3d at 1243).

As the district court held, the Petition’s text and the arguments of its proponents demonstrate the Petition’s excessive generality and scope, and its failure to satisfy NRS 295.009’s single-subject rule.

A. The District Court Properly Rejected Appellants’ Invitation to Ignore NRS 295.009(2).

NRS 295.009(2) requires the component parts of the Petition to be “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 [Petition].” NRS 295.009(2). Appellants urged the district court to ignore NRS 295.009(2)’s explicit single-subject standard, contending that “Nothing 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.” III AA 520.³ Appellants further argued that “As long as the primary purpose of a proposed petition is identifiable, and as long as its components relate

³ In an apparent about-face maneuver, Appellants now acknowledge that an initiative petition meets NRS 295.009’s single-subject requirement “provided that the proposed changes are functionally related and germane to each other and a single subject.” AOB 11 (citing *Helton*, 512 P.3d at 312).

functionally to that primary purpose, it matters not if the measure affects one or a hundred chapters of the NRS.” III AA 521.

Appellants’ argument flatly contradicts NRS 295.009(2) as well as this Court’s decisions enforcing it. As recently as this Court’s holding in *Nevadans for Reproductive Freedom v Washington*, 140 Nev. Adv. Op. 28, 2024 WL 1688083 (April 18, 2024), at *3, this Court affirmed that “a petition meets [NRS 295.009(1)’s] single-subject requirement if its provisions ‘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,” quoting NRS 295.009(2) (emphasis added).

The district court rejected Appellants’ invitation to ignore NRS 295.009(2)’s standard, affirming that “to satisfy the single-subject rule, NRS 295.009(2) more particularly requires ‘the parts of the proposed initiative or referendum’ to be ‘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 or referendum.’” IV AA 811. The district court concluded the Petition’s components are not “functionally related and germane ***to each other***.” IV

AA 811. The district court properly interpreted and enforced NRS 295.009(2).

B. The Petition’s Blanket Increase on Amounts that Are Exempt from Judgment Is Not “Functionally Related and Germane To” Preventing “Predatory Lending.”

The Petition’s text demonstrates its proposed components are not “functionally related and germane to each other,” as NRS 295.009(2) requires. The Petition proposes a ten-fold increase to NRS 21.090’s and NRS 21.105’s exemptions (from \$400 to \$5,000), proposing to shield greater amounts of money in a personal bank account that is protected from a writ of execution or garnishment. I AA 18-19. But nothing in the Petition explains how such a blanket increase is meant to “Prevent Predatory Payday and Other Loans,” as the Petition’s title and description of effect suggests. I AA 9. A judgment debtor may be subject to a writ of execution or garnishment under NRS Chapter 21 for any number of reasons that have nothing to do with “payday” loans, or even a “loan” at all. NRS 21.075(26), for example, addresses a “judgment of foreclosure on a mechanic’s lien,” while NRS 21.095 pertains to judgment debt that is owed “for a medical bill.” Protecting more of a person’s money from efforts to recover such debts have nothing to do with preventing “predatory” or

other “loans.” The Petition couples these proposed changes with others that are ostensibly meant to combat “predatory lending” even though the proposed increase in exempt amounts has nothing to do with “predatory lending.” Thus, the district court correctly determined “the Petition’s proposed changes concerning garnishment, writs of execution, and other proposed changes, have nothing to do with the lending of money at an unconscionable or exorbitant rate of interest.” IV AA 810.

C. The Petition’s “Automatic” Protection of \$5,000 in a Personal Bank Account Constitutes the “Logrolling” NRS 295.009 Seeks to Prevent

The Petition’s proposed “automatic” increase in how much money a person may protect in their personal bank account raises precisely the type of “logrolling” concerns that “the single-subject requirement is intended to prevent.” *Nevadans for Reproductive Freedom v. Washington*, 140 Nev. Adv. Op. 28 (April 18, 2024), 2024 WL 1688083, at *4. “Logrolling” involves “an unpopular provision typically...buried in the text of an initiative addressing a more popular provision that the proponent expects will easily be approved by the voters.” *Id.* (citing *Nevadans for Protection of Property Rights*, 122 Nev. at 922, 141 P.3d at 1254 (Hardesty J., concurring and dissenting)). “[T]he single-subject

requirement aims to prevent logrolling by ensuring that the voters' attention is focused on the one subject being advanced, 'without creating confusion over what that subject is, and without making them choose between competing policy goals.'" *Id.*

The Court should very cautiously evaluate the components of a Petition that enticingly promises to "automatically protect \$5,000 of savings in a personal bank account (up from \$400 now), and \$850 of wages in any workweek (up from \$369)." I AA 27. Any manner of otherwise unpopular provisions could understandably be overlooked by a voter asked to support a proposed "automatic" guarantee of more money in their "personal bank account." *Id.* To be sure, such a proposal presented as a standalone measure may raise little concern about "logrolling." But this Petition combines with an enticing "automatic" pecuniary carrot several *other* complex changes to existing law, including proposed fees, penalties, and other liability, that presumably would not stand on their own merit. The Petition's effective repeal of SB 290 is one such obvious example of a proposal that could not stand on its own merit. SB 290 passed nearly unanimously with broad bi-partisan support, and as one lawmaker described it, "will probably have the biggest impact on many of our

citizens who need emergency help.” I AA 84 (citing *Nev. Sen. Daily Journal* (82nd Leg. Nev., May 25, 2023) (Floor Statement of Sen. Jeff Stone supporting SB 290). An opponent seeking voter repeal of all or parts of SB 290 would certainly prefer to propose such a repeal with the help of an “automatic” guarantee of thousands of dollars in a voter’s personal bank account, rather than proposing the repeal as a standalone measure.

In short, combining complex (and likely unpopular) changes to Nevada law with an “automatic” increase in the money a person may protect in their personal bank account demonstrates the “logrolling” NRS 295.009(1)-(2)’s single-subject rule exists to prevent.

D. The Petition’s Restrictions on Earned Wage Access Services, Service Providers, and Employers, are Not “Functionally Related and Germane To” Preventing “Predatory Lending.”

The parties agree that the Petition’s definition of “loan” includes earned wage access services, a service DailyPay offers to thousands of Nevadans and which existing law declares is not a “loan.” I AA 79-80. Appellants contend that “this is simply an aspect of the policies embodied in the Petitions: the Legislature defined [DailyPay’s] transactions one way through a Senate Bill, and the people are free to define them another way through direct legislation.” III AA 521. But Appellants’ position

disregards NRS 295.009(2)'s single-subject standard. The Petition does not notify signatories that, in addition to targeting so-called "predatory" and "high-interest" loans, the Petition also restricts other financial services that are not loans, that do not charge interest, and that are non-recourse. The Petition violates the single-subject standard because its component parts do not functionally relate 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." NRS 295.009(2).

Under Senate Bill 290 (82nd Leg., Nev. 2023), earned wage access services are financial products that empower a worker to access money they have already earned sooner than a regular payday cycle will allow. Such services, by law, are not loans, are not credit or lending, are not "predatory," and do not charge interest or late fees. I AA 75-79; II AA 336-363. Senate Bill 290, Sec. 33, expressly provides that earned wage access services shall not be deemed "a loan or other form of credit," or "a money transmission, or to be subject to an of the provisions of law governing loans or money transmitters." II AA 355. The Petition would re-classify such services as "loans," and would do so by deceptively branding them as "predatory" "high-interest lending practices," or transactions that are

“structured to mask their nature as loans[.]” I AA 27. A potential signatory would perceive the Petition’s “general subject” to be preventing “predatory” or “high-interest” loans, without being apprised that the Petition’s restrictions and penalties apply to other non-loan, non-interest services. The Petition violates the single-subject rule under NRS 295.009(2), because the parts of the proposed initiative are not “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 proposal. NRS 295.009(2).

Moreover, the Petition does not provide sufficient notice to thousands of existing earned wage access users, and employers who offer earned wage access services to their workers, that the Petition adversely affects their interests. I AA 71; II AA 327. The Petition applies not just to “any payday lender” but also to any “*other person*” that “[m]arkets, *offers*, brokers, *arranges*, *facilitates*, makes or services *a loan* as defined in Section 5” of the Petition. I AA 45 (emphases added). The excessively broad scope of the Petition’s text reaches not just service providers, but third-party employers and payroll servicers with whom DailyPay and other employer-integrated earned wage access service

providers partner to offer much-needed financial assistance to Nevada workers. *See* SB 290, Sec. 9.1, at II AA 339 (“employer-integrated” earned wage access services are “the delivery to a user of access to earned but unpaid income determined based on employment, income, or attendance data obtained directly or indirectly from an employer or an employer’s payroll service provider”) (emphasis added).

The employers, payroll servicers, and others who supply the data necessary to “offer” and “facilitate” employer-integrated earned wage access services will be affected by the Petition, if approved. Such entities have no reason to anticipate that they will be swept up in a Petition that ostensibly targets so-called “predatory lenders.” Under NRS 295.009(2), the Petition’s component parts do not functionally relate to each other in a way that sufficiently notifies signatories of the proposal’s adverse effects on these interests. The Petition, therefore, fails to meet NRS 295.009(1)-(2)’s single-subject standard and the district court correctly concluded as much. IV AA 810-11.

E. The Proponents’ Arguments Demonstrate the Petition Violates NRS 295.009’s Single-Subject Requirement.

“To determine the initiative’s purpose or subject, this Court looks to its textual language and the proponents’ arguments.” *Helton v. Nev.*

Voters First PAC, 138 Nev. Adv. Op. 45, 512 P.3d 309, 314 (quoting *Las Vegas Taxpayer Accountability Cmte.*, 125 Nev. at 180, 280 P.3d at 439). Appellants' arguments demonstrate the Petition's excessive generality. If the Petition is permitted to proceed with a supposed "single subject" as broad as "ensuring better debt protections," or "consumer debt relief," (AOB 5, 13-14), then the single-subject requirement would be rendered a nullity. The district court correctly held that the Petition Proponents "have articulated an excessively generalized subject matter that, if adopted, would effectively nullify the single-subject rule." IV AA 810-811.

Appellants argue the Petition's "primary purpose" is "an overall program of consumer debt relief." AOB 13. They acknowledge this Court has rejected equally vague and nebulous proposed "single subjects" as excessively general and invalid for single-subject purposes. AOB 19 (citing *Las Vegas Taxpayer Accountability Cmte.*'s holding that "overly-generalized subjects" included "government," "public welfare" "fiscal affairs" and "public disclosure"). There is no reasonable distinction between Appellants' proposed primary purpose of "consumer debt relief" and the overly generalized topics Appellants admit are invalid for single-subject purposes. Indeed, "consumer debt relief" is no less generalized

than topics such as “public welfare,” “voter approval,” or “fiscal relief,” that this Court determined “circumvent the single-subject rule by phrasing the proposed law’s purpose or object in terms of ‘excessive generality.’” *Las Vegas Taxpayer Accountability Cmte.*, 125 Nev. at 181, 208 P.3d at 439 (quoting *Harbor v. Deukmejian*, 43 Cal.3d 1078, 742 P.2d 1290, 1303 (1987)). “Consumer debt relief” is just as nebulous as other excessively general topics that violated NRS 295.009(1)-(2).

This Court similarly held that a proposed single subject of “voter approval of use of taxpayer funds to finance large new development projects” did not pass muster for single-subject purposes, because “the proposed initiative [was] not limited to the financing of ‘large new development projects’ but instead encompassed the far more complex task of adopting and amending redevelopment plans.” *Las Vegas Taxpayer Accountability Cmte.*, 125 Nev. at 181-82, 208 P.3d at 440. Here, too, the proposed Petition is not limited to providing “consumer debt relief,” but instead reaches beyond “consumer debt” to reclassify and restrict financial services that do not constitute “a loan or other form of credit.” SB 290, Sec. 33(1)(a)(1) (at 2 AA 355).

The Petition Proponents’ single-subject arguments further demonstrate the Petition’s failure to satisfy NRS 295.009’s single-subject rule, and the district court correctly held as much. IV AA 809-811.

III. The Petition’s Description of Effect is Misleading, Argumentative, and Deceptive.

The district court declined to address the Petition’s description of effect, determining its single-subject decision was dispositive. IV AA 811. However, Appellants raise the issue, improperly invoking the district court’s rationale in a separate order, on a different description of effect, for a different Petition not before this Court. AOB 19-22. Appellants’ attempt to obtain this Court’s imprimatur on the challenged Petition’s description of effect lacks merit and this Court should reject it.

A. Appellants May Not Invoke an Order that is Not Before this Court.

As a threshold issue, Appellants acknowledge that the district court’s separate order on Petition S-01-2024, which is the subject of this appeal, and its order on Petition 2-03-2024, which is not, are two “separate matters before this Court.” AOB 8. Appellants concede that “[t]his present appeal only concerns the First Petition, Initiative Petition S-01-2024, which the district court determined violated Nevada’s single-subject rule.” AOB 6. So by their own admission, it is improper for Appellants to direct

this Court to “the description in the interest-rate-only initiative,” *i.e.*, the description of effect for a Petition that is not the subject of this appeal. AOB 19; IV AA 805 (“This Order addresses only the first Petition”). The Second Petition’s description of effect did not inform the district court’s order and it is not before this Court.

Further, Appellants’ argument misrepresents the two descriptions of effect as “verbatim” versions of each other, when they are not. AOB 19-20. The First Petition’s description of effect at issue here begins: “This measure addresses high-interest lending practices by establishing maximum 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.*” I AA 62; II AA 384 (emphasis added). The emphasized language above is omitted from the Second Petition’s description of effect, which also includes an entirely separate paragraph. Appellants are not correct to state that the Petition’s description is “taken verbatim from the description in [the Second Petition’s] interest-rate-only initiative, and merely adds a brief paragraph explaining the asset-protection provisions of the Petition.” AOB 19-20. The challenged Petition’s description of effect differs substantially from

the Second Petition. *Compare* I AA 62 (First Petition’s description) *and* II AA 402 (Second Petition’s description). This Court should reject the argument that the district court’s approval of the Second Petition’s description of effect somehow means the First Petition’s “description of effect also complies” with NRS 295.009(1)(b). AOB 20.

B. The Petition’s Description of Effect is Inaccurate, Misleading, and Legally Deficient.

If the Court is inclined to entertain Appellants’ challenge, this Court should nonetheless conclude that the Petition’s description of effect is inaccurate, misleading, argumentative, and legally deficient, as DailyPay and others contended in the district court. II AA 327-330.

NRS 295.009(1)(b)’s description of effect requirement “is significant as a tool to help prevent voter confusion and promote informed decisions.” *Las Vegas Taxpayer Accountability Cmte. v. City Council of City of Las Vegas*, 125 Nev. 165, 177, 208 P.3d 429, 437 (2009) (citation omitted). To assess a description of effect’s sufficiency, this Court determines whether it “contains a straightforward, succinct, nonargumentative statement of what the initiative will accomplish and how it will achieve those goals.” *Educ. Initiative PAC*, 129 Nev. at 38, 293 P.3d at 876.

Citing the *Helton* decision, Appellants gloss over the problems with the Petition's description of effect, arguing that it "does not serve as the full, detailed explanation, including arguments for or against, that voters receive prior to a general election." AOB 20 (citing *Helton*, 512 P.3d at 317-18). The problem with this comparison is that *Helton* involved a proposed ***constitutional amendment***, rather than a statutory initiative Petition. *Helton*, 138 Nev. Adv. Op. 45, 512 P.3d at 312-13. This distinction matters because a ballot measure to amend the constitution necessarily includes an explanation and arguments for and against the proposal, while a statutory initiative may effectuate a change in law without such an explanation. Before voters are asked to approve a statutory initiative at the ballot, assuming it collects the requisite signatures, the Secretary of State must first "transmit such petition to the Legislature" whereupon the proposed measure "shall be enacted or rejected by the Legislature without change or amendment within 40 days." NEV CONST., Art 19, Sec. 2(3). The measure is submitted to the voters with additional explanation only if the Legislature rejects or takes no action on the proposal. *Id.* The process for a constitutional amendment at issue in *Helton* differs meaningfully in that a qualifying proposed

constitutional change necessarily includes publication “in a newspaper of general circulation, on three separate occasions, in each county in the State, together with any explanatory matter which shall be placed upon the ballot, the entire text of the proposed amendment” for voter review.” NEV. CONST. Art. 19, Sec. 2(4).

Accordingly, “when the proponent seeks to garner enough initial support so that the initiative will be considered by the Legislature and the voters...*the description of effect may hold even more impact*[.]” *Coalition for Nevada’s Future*, 2016 WL 2842925 (unpublished) at *2 (emphasis added). To be sure, this does not mean that the description of effect “must highlight every nuance and effect of an initiative[.]” *Educ. Init. v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 47, 293 P.3d 874, 882 (2013). But it does mean that this Court should take a “holistic approach to determine...whether the information contained in the description is correct and does not misrepresent what the initiative will accomplish and how it intends to achieve those goals.” *Id.* at 48, 293 P.3d at 883.

Here, the information in the description is not correct. Nor does it accurately represent what the initiative will accomplish and how it will achieve those goals. The description is completely silent as to its material

effects on SB 290's provisions authorizing earned wage access services. The description states it applies only to "high-interest lending practices," I AA 27, when it also applies to earned wage access services that, by law, are not lending practices and "shall not...charge a late fee, deferral fee, interest or other penalty[.]" SB 290, Sec. 31(1)(c); II AA 354. The description of effect states it applies only to various "loans" including "loan types dependent on future earnings and income," when its definition of "loan" also applies to transactions involving wages a worker has already earned, specifically, "unpaid wages...whether earned, to be earned, or contingent upon future earnings." II AA 384.

The description of effect even contradicts the text of the proposed measure itself. The description states that it addresses "high-interest lending practices." I AA 27. But by its text, the proposed measure goes much further, providing that "[a]ny transaction that satisfies any definition in this section is a 'loan' for purposes of this chapter, without regard to the means of collection, without regard to whether the payday lender or other lender has legal recourse against the borrower in the event of non-repayment, and without regard to whether the transaction carries required charges payments." I AA 10. The Petition's restrictions are not

limited to “high-interest lending practices,” as they would also penalize other transactions regardless of whether interest, late charges, or other payments are required at all. *Id.* The Petition reaches transactions even if the borrower faces no recourse for non-payment. *Id.* The Petition’s text restricts transactions that are neither “high-interest” nor “predatory” in any rational sense, despite the description’s representations otherwise.

The description of effect offers inaccurate and incomplete information, undermining “informed decision-making” at the critical signature-gathering phase of the statutory initiative process.

IV. The Petition Must Include the Full Text of SB 290, Which It Proposes to Repeal.

The Petition effectively repeals SB 290’s earned wage access provisions. While the Petition may not say so expressly, “a subsequent statute, revising the whole subject-matter of a former one...although it contains no express words to that effect, must, on the principles of law as well as in reason and common sense, operate to repeal the former.” *State v. Rogers*, 10 Nev. 319, 322 (1875). The Constitution is clear that a ballot proposal to repeal or revise existing law “shall include the full text of the measure proposed,” NEV. CONST. Art. 19, Sec. 3(1), and that “no law shall be revised or amended by reference to its title only; but, in such case,

the act as revised or section as amended, shall be re-enacted and published at length.” NEV CONST. Art. 4, Sec. 17.

SB 290’s classification of earned wage access services as non-loan, non-credit products that merely facilitate access to what a worker has already rightfully earned is the touchstone feature of SB 290. I AA 80-81. SB 290’s legislative sponsors explained that the bill’s definition of earned wage access services “is key to distinguishing [earned wage access] products from loans and other lending-related financial products and services.” *Id.* (citing *Hearing on SB 290*, Nev. Sen. Comm. and Labor Cmte. Mins, Testimony of Sen. Maj. Ldr. Nicole Cannizzaro (April 5, 2023) at 42). The Petition will repeal this definition and re-classify earned wage access services as “loan” products, and punish earned wage access service providers and their employer partners as “predatory” lenders. I AA 12-13. If the Petition seeks to achieve this outcome, it must also provide the full text of SB 290, so that a potential signatory has a meaningful chance to review the legislation in context before deciding whether or not to support its effective repeal.⁴

⁴ On May 9, 2024, Nevadans for the Common Good filed an untimely motion for leave to file an amicus brief in this docket. DailyPay opposed the late-filed motion in part because it misrepresented the legislative

CONCLUSION

Appellants have failed to demonstrate that the Petition satisfies NRS 295.009's single-subject rule. Appellants' remaining arguments regarding the Petition's description of effect lack merit. If this Court is inclined to permit the Petition to move forward, this Court must remand for the district court to revise the description of effect, and order that the Petitions include the full text of SB 290, which the Petition seeks to repeal.

DATED this 10th day of May 2024.

~~HOLLAND & HART LLP~~



J. Malcolm DeVoy (11950)
Matthew Morris, Esq. (15068)
4570 Kietzke Lane Ste 100
Reno, NV 89051
*Attorneys for Respondent
DailyPay Inc.*

record regarding SB 290, suggesting it is “designed to evade existing consumer protections.” NCG Amicus Brief (May 9, 2024) at 7 n.7. To the contrary, during SB 290's committee hearings, the Nevada Coalition of Legal Service Providers testified that “[W]e are very comfortable with the consumer protections in [SB 290],” including its “non-recourse nature,” and that SB 290's earned wage access service provisions “offer[] an alternative” to “predatory business” that “will save Nevadans a lot of money in the long run.” 82d Leg. Nev., Assm. Cmte. on Comm. & Labor Hearing on SB 290 (May 31, 2023), Testimony of Jonathan Norman for Nevada Coal. of Legal Svc. Providers, at 15-16.

ATTORNEY'S CERTIFICATE OF COMPLIANCE

1. 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 Microsoft Word in 14 point Times New Roman type style.

2. I further certify that this brief 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 **7,045 words**.

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, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 10th day of May 2024.

HOLLAND & HART LLP

A handwritten signature in blue ink, appearing to read "J. Malcolm DeVoy", is enclosed within a blue oval. The signature is written in a cursive style.

J. Malcolm DeVoy (11950)
Matthew Morris, Esq. (15068)
4570 Kietzke Lane Ste 100
Reno, NV 89051

*Attorneys for Respondent
DailyPay Inc.*

HOLLAND & HART LLP
4570 KIETZKE LANE STE 100
RENO, NV 89051

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1)(b) and 25(1)(d), I, the undersigned, hereby certify that I electronically filed the foregoing **RESPONDENT DAILY PAY'S ANSWERING BRIEF** with the Clerk of Court for the Supreme Court of Nevada by using the Supreme Court of Nevada's E-filing system on the 10th day of May, 2022.

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:

Bradley S. Schrager, Esq.
Daniel Bravo, Esq.
BRAVO SCHRAGER LLP
6675 South Tenaya Way, Suite 200
Las Vegas, Nevada 89113

Attorneys for Appellants

Joshua H. Reisman
Elizabeth M. Sorokac
REISMAN SOROKAC
8965 South Eastern Ave., Ste 382
Las Vegas, NV 89123

*Attorneys for Preferred Capital
Funding-Nevada, LLC. And
Alliance for Responsible Consumer
Legal Funding*

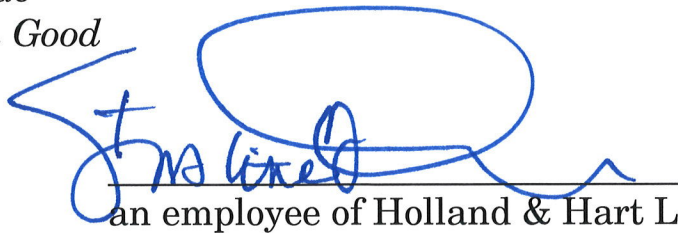
Laena St-Jules, Esq.,
OFFICE OF THE ATTORNEY GENERAL
100 N. Carson Street
Carson City, Nevada 89701
Attorney for Respondent Francisco V. Aguilar

Todd L. Bice, Esq.
Jordan T. Smith, Esq.
Daniel R. Brady, Esq.
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
Las Vegas, NV 89101

*Attorneys for Respondents
Nevadans for Financial Choice
and Christina Bauer*

Courtney K. Lee
Peter Aldous
Harrison Bohn
**LEGAL AID CENTER OF SOUTHERN
NV, INC.**
725 E. Charleston Blvd.
Las Vegas, NV 89104

*Attorneys for Amicus Curiae
Nevadans for the Common Good*


an employee of Holland & Hart LLP