

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

KATE FELDMAN, an individual; AND  
STOP PREDATORY LENDING NV, a  
Nevada nonprofit corporation,  
Appellants,  
vs.  
FRANCISCO V. AGUILAR, in his official  
capacity as Nevada Secretary of State;  
NEVADANS FOR FINANCIAL CHOICE, a  
Nevada Political Action Committee;  
CHRISTINA BAUER, an individual;  
DAILYPAY, INC., a Delaware Corporation;  
PREFERRED CAPITAL FUNDING-  
NEVADA, LLC, a Nevada Limited Liability  
Company; AND ALLIANCE FOR  
RESPONSIBLE CONSUMER LEGAL  
FUNDING, an Illinois Nonprofit Corporation  
Respondents.

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**APPEAL**

from the First Judicial District Court of the State of Nevada  
The Honorable WILLIAM MADDOX, Senior Judge  
District Court Lead Case No. 24 OC 00018 1B

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**RESPONDENTS' ANSWERING BRIEF**

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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.

Preferred Capital Funding - Nevada, LLC, a Nevada limited liability company, is not a publicly traded company, and does not have 10% or more of its membership interests owned by a publicly traded company. Preferred Capital Funding - Nevada, LLC's parent company is Preferred Capital Funding of Illinois, LLC, an Illinois limited liability company, which is not a publicly traded company and does not have 10% or more of its membership interests owned by a publicly traded company.

Alliance for Responsible Consumer Legal Funding, an Illinois nonprofit corporation, is not a publicly traded company, does not have 10% or more of its stock owned by a publicly traded company, nor does it have any parent corporations.

Preferred Capital Funding - Nevada, LLC and Alliance for Responsible Consumer Legal Funding were represented in the District Court by Reisman

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Sorokac. They are currently represented in this Court by Reisman Sorokac.

DATED this 10th day of May, 2024.

**REISMAN SOROKAC**

By: /s/ Joshua H. Reisman, Esq.

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**TABLE OF CONTENTS**

**NRAP 26.1 DISCLOSURE**..... i

**TABLE OF CONTENTS**..... iii

**TABLE OF AUTHORITIES**..... iv

**I. STATEMENT OF ISSUES PRESENTED** ..... vi

**II. STATEMENT OF THE CASE** .....1

**III. STATEMENT OF FACTS**.....3

**IV. SUMMARY OF ARGUMENT** .....8

**V. ARGUMENT**.....12

**VII. CONCLUSION** .....30

**CERTIFICATE OF COMPLIANCE** .....31

## TABLE OF AUTHORITIES

### Cases

<i>Aspen Skiing Co. v. Cherrett (In re Cherrett)</i> 873 F.3d 1060 (9th Cir. 2017) . . . . .	25
<i>Cash4Cases, Inc. v. Brunetti</i> , 2018 NY Slip Op 08360, ¶ 1, 167 A.D.3d 448, 449, 90 N.Y.S.3d 154, 155 (App. Div. 1st Dept.) . . . . .	22
<i>Douglas Disposal, Inc. v. Wee Haul, LLC</i> 123 Nev. 552, 557 n.6, 170 P.3d 508, 512 n.6 (2007) . . . . .	28
<i>Helton v. Nev. Voters First Pac</i> 138 Nev. Adv. Rep. 45, 512 P.3d 309 (Nev. 2022) . 12, 13, 16, 19, 20, 26, 29, 30	
<i>Henry v. Lehman Commer. Paper, Inc. (In re First All. Mortg. Co.)</i> 471 F.3d 977 (9th Cir. 2006) . . . . .	21
<i>Las Vegas Taxpayer Accountability v. City Council of Las Vegas</i> 125 Nev. 165, 208 P.3d 429, (2009) . . . . .	13, 17, 18, 20
<i>MoneyForLawsuits V Ltd. P'ship v. Rowe</i> No. 4:10-CV-11537, 2012 U.S. Dist. LEXIS 43558, (E.D. Mich. Jan. 23, 2012) . . . . .	22
<i>Nevadans for Reprod. Freedom v. Washington</i> No. 87681, 2024 Nev. LEXIS 19, 140 Nev. Adv. Rep. 28, (April 18, 2024) (en banc) . . . . .	12, 29
<i>Nevadans for the Prot. of Prop. Rights, Inc. v. Heller</i> 122 Nev. 894, 141 P.3d 1235 (2006) . . . . .	12, 20, 27, 28
<i>Prevent Sanctuary Cities v. Haley</i> 2018 Nev. Unpub. LEXIS 442 (2018) (unpublished disposition) . . . . .	17
<i>Slenk v. Transworld Sys.</i> 236 F.3d 1072 (9th Cir. 2001) . . . . .	25

### Statutes

NRS § 97B.060 . . . . .	25
NRS § 295.009 . . . . .	12, 28, 29, 30
NRS § 604C.060 . . . . .	23
NRS § 604C.100 . . . . .	22, 23
NRS § 604C.220 . . . . .	5, 22, 23
NRS § 604C.310 . . . . .	23
NRS § 604C.350 . . . . .	23, 24
NRS § 604C.360 . . . . .	23, 25

**Other Authorities**

*Bouvier Law Dictionary Debt (debtor or creditor)* (Desk ed.) . . . . . 25  
*Bouvier Law Dictionary Consumer Debt* (Desk ed.) . . . . . 25  
*Predatory Lending Definition*, Investopedia.com,  
[https://www.investopedia.com/terms/p/predatory\\_lending.asp](https://www.investopedia.com/terms/p/predatory_lending.asp) (last visited May 10, 2024) . . . . . 21  
*Preventing Definition*, Dictionary.Cambridge.org,  
<https://dictionary.cambridge.org/us/dictionary/english/prevent?q=preventing> (last visited May 10, 2024) . . . . . 15  
*Relief Definition*, Dictionary.Cambridge.org,  
<https://dictionary.cambridge.org/us/dictionary/english/relief> (last visited May 10, 2024) . . . . . 15  
*Relief Definition*, OED.com,  
[https://www.oed.com/dictionary/relief\\_n2?tab=meaning\\_and\\_use](https://www.oed.com/dictionary/relief_n2?tab=meaning_and_use) (last visited May 10, 2024) . . . . . 15, 16

**Rules**

NRAP 26.1(a) . . . . . i  
NRAP 28(e) . . . . . 32  
NRAP 32(a) . . . . . 32

## I. STATEMENT OF ISSUES PRESENTED

- A. Whether the Initiative<sup>1</sup> embraces more than one subject in violation of NRS 295.009's single-subject requirement.
- B. Whether the Initiative's purpose or subject is preventing predatory lending—not an overall program of consumer debt relief.
- C. Whether the Initiative's provisions are not all functionally related and germane to the purpose of preventing predatory lending.
- D. Whether Appellants<sup>2</sup> are attempting to circumvent the single-subject rule by impermissibly phrasing the Initiative's purpose or subject in terms of excessive generality.
- E. Whether the Initiative's provisions are not all functionally related and germane to the purported purpose of “an overall program of consumer debt relief.”
- F. Whether the Description of Effect<sup>3</sup> is legally insufficient under NRS 295.009(1)(b) because it fails to provide a straightforward summary of the Initiative's goals and how it intends to achieve those goals.

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<sup>1</sup> "Initiative" is defined in Section II below.

<sup>2</sup> "Appellant is defined in Section II below.

<sup>3</sup> "Description of Effect" is defined in Section II below.

## II. STATEMENT OF THE CASE

This is an appeal from the First Judicial District Court ("District Court") order issued following the court's March 22, 2024, hearing challenging Initiative Petition S-01-2024 ("Initiative").<sup>4</sup> The District Court's order on the Initiative stated that the Initiative "violates Nevada's single-subject rule under NRS 295.009" and that the Nevada Secretary of State was "enjoined from permitting Initiative Petition S-1-2024 from being circulated for signatures." (*See* Volume I of Appellants' Appendix ("AA") IV AA at 772.)

The District Court found that the Initiative "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.'" (*See* IV AA at 769.) The Initiative's "proposed changes to NRS Chapter 21, which contains Nevada's statutes on garnishment, execution, and exemptions from judgments, have no nexus to the Petition's other putative purpose of imposing maximum interest rates on 'loans' and other transactions." (*See* IV AA at 769–770.)

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<sup>4</sup> On March 22, 2024, the District Court also heard challenges to Initiative Petition S-03-2024. The District Court issued a separate order on Initiative Petition S-03-2024. The appeal of the District Court's order on Initiative Petition S-03-2024 is a separate appeal, which is Nevada Supreme Court Docket No. 88557.



Next, the District Court found that "[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." (*See* IV AA at 770.) The District Court reasoned that the Initiative's "proposed changes concerning garnishment, writs of execution, the definition of 'earnings' for purposes of independent contractors versus employees, and other proposed changes, have nothing to do with 'the lending of money at unconscionable or exorbitant rates of interest.'" (*See* IV AA at 770.)

Finally, the District Court found that the purpose advanced by appellants Kate Feldman, an individual, and Stop Predatory Lending NV, a Nevada nonprofit corporation (collectively, the "Appellants" of "SPLNV"), to the extent it was to achieve a single goal: ensuring Nevadans have better debt protections, also violated NRS 295.009's single-subject rule. (*See* IV AA at 770.) Specifically, the District Court found that this purpose is "an excessively generalized subject matter that, if adopted, would effectively nullify the single-subject rule." (*See* IV AA at 770 – 771.) The District Court reasoned that "the general scope of that goal could plausibly relate to any proposal on some level." (*See* IV AA at 771.)

Respondents Preferred Capital Funding - Nevada, LLC, a Nevada limited liability company ("Preferred"), and Alliance for Responsible Consumer Legal

Funding, an Illinois nonprofit corporation ("ARC", collectively "Respondents"), ask this court to uphold the District Court's order finding that the Initiative violates Nevada's single-subject rule on the bases stated therein.

### **III. STATEMENT OF FACTS**

On January 5, 2024, Appellant Kate Feldman filed the Initiative with the Nevada Secretary of State, Francisco V. Aguilar. (*See* AA at 160–184.) Respondents<sup>5</sup> contend that the Initiative includes a number of disparate subjects in violation of NRS 295.009, which contention was upheld by the District Court in the order Appellants now appeal to this Court.

The Initiative seeks to amend Nevada Revised Statutes by adding a new Chapter 604D to restrict any "payday lender or other person" from charging an annual percentage rate in excess of 36% on the unpaid balances of “loans” and other transactions made subject to the Initiative (collectively, the "Catch-All Interest Rate Restrictions"). (*See* I AA at 161–166.) The Initiative broadly defines “payday lender or other person” to include those within and outside of currently defined lending and those who do not offer or have any connection with payday lending. (*See* I AA at 162–163.) Similarly, the Initiative broadly redefines the term “loan” to include

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<sup>5</sup> In this instance, Respondents includes all parties listed as Respondents in the caption.

transactions that are currently not loans or lending under Nevada law. (*See* I AA at 161–162.)

The Initiative also seeks to restrict other lenders and non-lenders from charging an annual percentage rate in excess of 36% on the unpaid balances of specific loans and non-loan transactions (the, "Specific Interest Rate Restrictions", together with the Catch-All Interest Rate Restrictions, the "Interest Rate Restrictions").<sup>6</sup> In order to apply the Specific Interest Rate Restrictions to a number of the transactions made subject thereto, including consumer litigation funding transactions—the business of Preferred and ARC's members, the Specific Interest Rate Restrictions would supersede any conflicting provision of NRS governing such transactions. (*See* I AA at 163–164.) If the Initiative is enacted, consumer litigation funding transactions would be subject to the Specific Interest Rate Restrictions,

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<sup>6</sup> The transactions the Initiative intends to cover include: (i) deferred deposit loans as defined in NRS 604A.050; (ii) high-interest loans as defined in NRS 604A.0703; (iii) title loans as defined in NRS 604A.105; (iv) refund anticipation loans as defined in NRS 604B.060; (v) consumer litigation funding transactions as defined in NRS 604C.100; (vi) installment loans as regulated by NRS Chapter 675; (vii) retail installment transactions as defined in NRS 97.115; (viii) loans secured by a life insurance or annuity contract as regulated by NRS 688A.110; (ix) all loans made by a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business under the laws of the State of Nevada; (x) consumer credit extended to certain members of the military and dependents as regulated by NRS 99.050; and (xi) earned wage access services as regulated by Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400. (*See* I AA at 163–164, and 166–170.)

notwithstanding NRS 604C.220, which states these transactions are not subject to any provisions of law applicable to loans. (*See* I AA at 163.)

Preferred is a licensed consumer litigation funder in Nevada. (*See* III AA 588.) ARC is an industry coalition established to preserve consumer litigation funding, as a choice, for individuals who have suffered economic loss from an accident and have a pending legal claim. *Id.* Consumer litigation funding provides financial support (for living or other expenses) to a plaintiff in a personal injury case through a nonrecourse transaction that creates a lien, only, on the plaintiff's potential recovery. *Id.* The transaction requires the plaintiff's attorney to assist with the agreement governing the transaction. *Id.* These transactions are unique to litigation and the needs of the injured and are very different from the consumer loans and other transactions addressed in the Initiative. *Id.*

In 2019, Nevada enacted a separate chapter of the Nevada Revised Statutes (Chapter 604C) to define and regulate consumer litigation funding—because the transactions did not fit into any of the categories of loans covered by existing Nevada law. *Id.* Nevada was clear that consumer litigation funding transactions conforming to NRS Chapter 604C are not loans and are not subject to any of the provisions of laws or statutory or regulatory provisions governing loans. (*See* NRS § 604C.220.) The funds are provided to an individual on a nonrecourse basis, and the individual (a personal injury plaintiff) assigns to the funder a contingent right to receive an

amount of the potential proceeds of a settlement, judgment, award, or verdict obtained in the individual's legal claim in the future. (*See* III AA 588.) The nonrecourse transaction does not create a debt for the individual; and the funder only receives repayment in the future in the event the individual recovers funds in his or her case. *Id.*

Consumer litigation funders, like Preferred and the other members of ARC, are not predatory. *Id.* They provide an option to injured individuals that allows them to maximize the value of their legal claim. *Id.* Without readily available funds, for living and other expenses, individuals may be forced to settle their legal claims, early, for far less than their true value. *Id.* The funds received allow plaintiffs to pay their rent and take care of their families while they are unable to work and are still pursuing their claim for just compensation—which can take years to resolve. Consumer litigation funding is a highly valued option for injured plaintiffs embroiled in litigation. *Id.* at 588-89. Preferred and ARC have and will continue to advocate for this crucial option, which would be fundamentally altered by the Initiative.

The Initiative also addresses additional unrelated subjects. First, the Initiative seeks to cause the State of Nevada to opt out of Sections 521 to 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980, 96 P.L. 221, 94 Stat. 132 ("Act"), to prevent lenders and non-lenders from applying any interest rates permitted by such Act to all loans and non-loans made subject to the new NRS

Chapter 604D as a result of the Initiative (the, "Act Opt-Out Provision"). (*See* I AA at 166.)

Second, the Initiative proposes to (i) increase the minimum amount of money that is not subject to a writ of execution or garnishment levied against a personal bank account of a judgment debtor pursuant to NRS 21.105, and require such amount to be adjusted based on changes to the Consumer Price Index for All Urban Consumers, Annual City Average, for the Western Region (the, "Garnishment Restrictions"), and (ii) remove civil immunity for a financial institution that makes an incorrect determination of whether money in the account of a judgment debtor is subject to execution pursuant to NRS 21.105 after applying commercially reasonable methods because the source of the money was not clearly identifiable or because the financial institution inadvertently misidentified the source of the money (the, "Immunity Waiver"). (*See* I AA at 170–172.)

Lastly, the Initiative also proposes to (i) increase the percentage of disposable earnings of a judgment debtor that are exempt from execution pursuant to NRS 21.090, and require such amount to be adjusted based on changes to the Consumer Price Index for All Urban Consumers, Annual City Average, for the Western Region, and (ii) revise the definition of earnings as defined in NRS 21.090(1)(g)(2) to also include compensation payable for personal services performed by a judgment debtor whether such judgment debtor is an independent contractor or employee

(collectively, the "Disposable Earnings Restrictions"). (See I AA at 172–173, and 178.)

#### IV. SUMMARY OF ARGUMENT

The Initiative's purpose or subject is preventing predatory lending—not an overall program of consumer debt relief. The purpose or subject is easy to discern.

The Initiative *expressly tells us*:

The Nevada Revised Statutes are hereby amended by adding . . . Chapter 604D: [the] ***Preventing Predatory Payday and Other Loans Act***[, which] shall be liberally construed ***to achieve its purposes, which are combatting predatory payday lending and other high-cost loans***; ensuring that out-of-state lenders cannot flout Nevada law by making payday loans, other loans, or transactions subject to this chapter at unlawful rates . . . ; and protecting law-abiding lenders from unfair competition by **predatory**, out-of-state entities.

(See I AA at 161 (emphasis added).)

The Description of Effect echoes the Initiative's *overarching* purpose of *preventing predatory lending*.

SPLNV argues that the Initiative's primary purpose is "an overall program of consumer debt relief." But this purported subject finds no support in the Initiative's or Description of Effect's actual language. Indeed, the phrase "consumer debt relief" is nowhere to be found in the language of *either* the Initiative or the Description of Effect. The subject should be clear from the Initiative petition's textual language and description of effect. Here, voters could not possibly discern that the Initiative's *primary purpose* is actually an overall program of consumer debt relief.

Appellants' purported single subject is an "excessively general" pretext—an after-the-fact justification to mask the multifarious and distinct subjects the Initiative impermissibly covers.

SPLNV contends that the Initiative's single subject is an overall program of consumer debt relief. However, their expansive statutory scheme does not confine itself, merely, to *consumer* debt relief. The statute seeks to regulate debt, in general, as well as transactions, like litigation funding, which do not involve consumer loans or consumer debt.

The Initiative actually encompasses asset protection for *all* judgment debtors; this is much wider *debt* relief. An overall program of "debt relief," however, is plainly an excessively general subject. Even the arguably narrower subject of "consumer" debt relief could easily cover (beyond interest-rate caps and asset protection) such distinct and expansive topics as bankruptcy protection and tax reform.

Appellant's "overall program of consumer debt relief" casts a vastly wide net. In truth, SPLNV is attempting to circumvent the single-subject rule by impermissibly phrasing the Initiative's purpose or subject in terms of excessive generality.

The Initiative's provisions are not all functionally related and germane to the Initiative's true purpose of preventing predatory lending. The asset protection



provision does not serve this subject. By SPLNV's own admission, the goal of that provision is to *relieve existing* consumer debt. The proposed changes in no way *prevent* the predatory lending that creates the debt in the first place. This is accomplished through the rate caps. The Initiative also proposes changes to consumer litigation funding transactions under NRS 604C. SPLNV seeks to impose a 36% rate cap. However, consumer litigation funding does not involve lending or the making of a loan; nor is it predatory. Accordingly, the proposed changes to NRS 604C do not serve the subject of preventing predatory lending.

Even if the Court were to adopt SPLNV's proposed single-subject of "an overall program of consumer debt relief," the provisions are still not all functionally related and germane to even this subject. The proposed rate cap on consumer litigation funding transactions does not serve the purpose of consumer debt relief. Litigation funding does not create consumer debt. The 604C rate cap also does not work together with the asset protection provision to relieve consumer debt; it is not the case that the effectiveness of the asset protection provision would be limited without the change to 604C. These two changes (asset protection and the 604C rate cap) are not connected in any way and do not pertain to each other and to the subject of an overall program of consumer debt relief.

In addition, the proposed asset protection provision is expansive in scope and impacts virtually all judgment collections—even collection that is completely

unrelated to *consumer* debt. The provision increases the exemptions from execution for virtually all judgment debtors. This is *general* debt relief and far exceeds the scope of what could be classified as *consumer* debt relief. The Initiative's asset protection provision has far reaching impact on judgment collection that has nothing to do with the purported subject of consumer debt relief.

The Initiative embraces more than one subject in violation of NRS 295.009's single-subject requirement. If, however, this Court determines that the Initiative complies with the single-subject rule, then the sufficiency of the Description of Effect needs to be addressed. The case should be remanded to the District Court for this determination.

SPLNV's purported single subject is "an overall program of consumer debt relief"; however, this overarching purpose cannot be gleaned from the Description of Effect. Accordingly, the Description of Effect does not provide a "straightforward" summary of what the Initiative is designed to achieve. The Description of Effect also fails to provide a straightforward summary of how the Initiative intends to reach the goal of consumer debt relief. The description fails to explain that the Initiative will modify consumer litigation funding transactions—which do not involve predatory loans and do not contribute to consumer debt. Voters will have no idea that their access to litigation funding could be impacted.

SPLNV's Description of Effect is legally insufficient under NRS 295.009(1)(b) because it fails to provide a straightforward summary of the Initiative's goals and how it intends to achieve those goals.

## V. ARGUMENT

### A. **The Initiative's purpose or subject is preventing predatory lending—not an overall program of consumer debt relief.**

Under Nevada law, "[e]ach petition for initiative or referendum must . . . [e]mbrace but one subject and matters necessarily connected therewith and pertaining thereto." NRS 295.009(1). A petition meets this 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).

In applying these provisions, the "preliminary inquiry . . . is whether the initiative's parts are 'functionally related' and 'germane' to each other." *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller (NPPRI)*, 122 Nev. 894, 907, 141 P.3d 1235, 1243 (2006). "To answer that question, the court must first determine the initiative's overarching purpose or subject and then determine if each provision is functionally related and germane to that purpose or subject." *Nevadans for Reprod. Freedom v. Washington*, No. 87681, 2024 Nev. LEXIS 19, at \*9; 140 Nev. Adv. Rep. 28 (April 18, 2024) (en banc). "A subject is the overall thing being discussed[.]" *Helton v. Nev. Voters First Pac*, 512 P.3d 309, 315 n.5, 138 Nev. Adv. Rep. 45 (Nev. 2022)

(citing *Black's Law Dictionary* (11th ed. 2019) (defining "subject" as "[t]he matter of concern over which something is created")).

"To determine the initiative's purpose or subject, th[e] court looks to its textual language and the proponents' arguments." *Las Vegas Taxpayer Accountability Comm. v. City Council of Las Vegas*, 125 Nev. 165, 180, 208 P.3d 429, 439 (2009).

"The court also will look at whether the description of effect articulates an overarching purpose and explains how provisions relate to a single subject." *Helton*, 512 P.3d at 315.

Here, the Initiative's purpose or subject is easy to discern. The Initiative expressly tells us:

The Nevada Revised Statutes are hereby amended by adding . . . Chapter 604D: [the] ***Preventing Predatory Payday and Other Loans Act***[, which] shall be liberally construed ***to achieve its purposes, which are combatting predatory payday lending and other high-cost loans***; ensuring that out-of-state lenders cannot flout Nevada law by making payday loans, other loans, or transactions subject to this chapter at unlawful rates . . . ; and protecting law-abiding lenders from unfair competition by **predatory**, out-of-state entities.<sup>7</sup>

(See I AA at 161 (emphasis added).)

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<sup>7</sup> Notably, the parties stipulated to the intervention of "Stop Predatory Lending NV"—the Nevada nonprofit corporation advocating for the passage of the Initiative. (See III AA at 470–479.) The acronym Appellants have chosen to collectively describe themselves, SPLNV, stands for Stop Predatory Lending NV. (See Apps.' Opening Br. ("AOB") at 1.)

The Description of Effect echoes the Initiative's *overarching* purpose of *preventing predatory lending*. The introductory paragraph leads with the statement: "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." (*See* I AA at 179 (emphasis added).) Thus, the Initiative does two things: (1) it "addresses high-interest lending practices by establishing maximum interest rates charged to consumers"; and (2) it "shields more of people's savings and earnings from garnishment".

The protection of assets—"and shields"—is a secondary, seemingly unrelated, concept that is mentioned *after* the initial goal of addressing high-interest lending practices.<sup>8</sup>

The next paragraph focuses, again, on high-interest lending: "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. . . ." (*See* I AA at 179.) The next paragraph discusses the interest rate cap: "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." *Id.* The fourth—and last—paragraph turns to the topic of asset

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<sup>8</sup> Notably, the lending affects "consumers"—while the garnishment impacts "people", a much broader group.

protection: "Additionally, the initiative automatically protects [certain savings, wages and disposable earnings] . . . from seizure for a debt." *Id.*

The Description of Effect is comprised of 180 total words; 111 of them—almost two-thirds—are devoted to the subject of high-interest lending.

Based upon the Initiative's express statement of purpose, and the Description of Effect's main focus, preventing predatory lending is the Initiative's subject: the overarching purpose, matter of concern, or thing being discussed.

SPLNV argues, however, that the Initiative's primary purpose is "an overall program of *consumer debt relief*[" (AOB at 13 (emphasis in the original).) But this purported subject finds no support in the Initiative's or Description of Effect's actual language. The proposed statute is titled the "Preventing Predatory Payday and Other Loans Act." Prevention "stop[s] something from happening[" *See Preventing Definition, Dictionary.Cambridge.org, <https://dictionary.cambridge.org/us/dictionary/english/prevent?q=preventing> (last visited May 10, 2024).* The *preventing* of predatory lending is accomplished through the Initiative's proposed 36% rate cap. Prevention is prospective. "Relief" is not. Relief addresses an existing need. *See Relief Definition, Dictionary.Cambridge.org, <https://dictionary.cambridge.org/us/dictionary/english/relief> (last visited May 10, 2024)* (defining "relief" as "food, money, or services that provide help for people in need"); *see also Relief Definition, OED.com,*

[https://www.oed.com/dictionary/relief\\_n2?tab=meaning\\_and\\_use](https://www.oed.com/dictionary/relief_n2?tab=meaning_and_use) (last visited May 10, 2024) ("the act of removing or reducing pain, worry, etc."). The concepts of prevention and relief are opposites—hence, the saying: "An ounce of prevention is worth a pound of cure." Accordingly, the statute's title in no way suggests an overall program of consumer debt relief.

Consistent with its title, the statute's *stated* purpose is "combatting predatory payday lending and other high-cost loans[.]" (*See* I AA at 161). The focus is on attacking the *lending*, the loans themselves—the *creation* of high-interest consumer debt. The stated goal has nothing to do with *relieving* consumers from their high-interest debt – after the fact.

Indeed, the phrase "consumer debt relief" is nowhere to be found in the actual language of *either* the Initiative or the Description of Effect. Even in the Description of Effect, the shielding of assets is to protect "people" in general—not specifically "consumers". It protects assets "from seizure for a debt"—not just a consumer debt. (*See* I AA at 179.)

"[T]he subject should be clear from the initiative petition's textual language and description of effect." *Helton*, 512 P.3d at 319 (Cadish, J., dissenting). Here, voters could not possibly discern that the Initiative's *primary purpose* is actually an overall program of consumer debt relief.

**B. Appellants' purported single subject is an "excessively general" pretext.**

SPLNV's purported single subject is an after-the-fact justification to "mask[] the multifarious and distinct subjects [the] initiative impermissibly covers." *Prevent Sanctuary Cities v. Haley*, 2018 Nev. Unpub. LEXIS 442, at \*7 (unpublished disposition). However, "an initiative proponent may not circumvent the single-subject rule by phrasing the proposed law's purpose or object in terms of 'excessive generality.'" *Las Vegas Taxpayer Accountability Comm.*, 125 Nev. at 181, 208 P.3d at 439. The rule "forbids joining disparate provisions which appear germane only to topics of excessive generality[.]" *Id.* (quoting *Harbor v. Deukmejian*, 43 Cal. 3d 1078, 240 Cal. Rptr. 569, 742 P.2d 1290, 1303 (Cal. 1987) (quoting *Brosnahan v. Brown*, 32 Cal. 3d 236, 186 Cal. Rptr. 30, 651 P.2d 274, 284 (Cal. 1982))).

SPLNV contends that the Initiative's single subject is "an overall program of *consumer debt relief*[" (AOB at 13 (emphasis in the original).) However, their expansive statutory scheme does not confine itself, merely, to *consumer* debt relief. The statute seeks to regulate debt, in general, as well as transactions, like litigation funding, which do not involve consumer loans or consumer debt.

The Initiative provides "greater protections for basic assets in debt collection proceedings[" (AOB at 5.) But these garnishment proceedings are not limited to judgments arising from consumer debt. The proposed changes (increased exemptions from execution) to the enforcement of judgments statute, NRS Chapter 21, pertain to virtually all personal judgment debtors, judgment creditors and types



of judgments. (*See* I AA 170–178). The changes are not restricted to judgment debtors who accumulated high-interest consumer debt, or predatory judgment creditors seeking to enforce predatory loans. Instead, the enhanced exemptions restrict collection on judgments that cover the universe of litigable claims<sup>9</sup>—even tort claims.<sup>10</sup>

SPLNV’s proposed statutory scheme also seeks to regulate litigation funding transactions—which are not loans and do not create consumer debt. *See* discussion, *infra*, at pages 21-24. Accordingly, under the guise of "consumer debt relief," SPLNV also seeks to regulate general debt and even non-debt transactions.

In *Las Vegas Taxpayer Accountability Comm.*, this Court found the purported single subject of "voter approval of use of taxpayer funds to finance large new development projects" excessively general where the initiative was "not limited to the financing of ‘large new development projects’ but instead encompass[e] . . . adopting and amending redevelopment plans." 125 Nev. at 181, 208 P.3d at 440. In

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<sup>9</sup> Consumer debt constitutes a miniscule share of the sum of judgments impacted by the proposed changes to Chapter 21. Contrary to SPLNV’s assertions, these unrelated judgments are not experiencing merely a "follow-on" or "spillover" effect, (AOB at 12 n.5); judgment collection, in general, is the direct target of their Initiative.

<sup>10</sup> Even the poor—which SPLNV seeks to protect—will be restricted from collecting on any personal-injury judgments they obtain. How does this promote consumer debt relief?

other words, the *true* subject was more akin to simply "voter approval," which the California Supreme Court had held was an excessively general subject. *Id.*

Similarly, here, the Initiative is not just limited to "an overall program of consumer debt relief." It actually encompasses asset protection for *all* judgment debtors; this is much wider *debt* relief. An overall program of "debt relief," however, is plainly an excessively general subject. *See id.* at 181, 208 P.3d at 439-40 (citing cases holding that the following subjects are excessively general: "government," "public welfare," "fiscal affairs," "statutory adjustments," "public disclosure, i.e., truth in advertising," and "voter approval"). Even the arguably narrower subject of "consumer" debt relief could easily cover (beyond interest-rate caps and asset protection) such distinct and expansive topics as bankruptcy protection and tax reform. *See Helton*, 512 P.3d at 314 (suggesting that the subject of "the *mechanics* of how voters vote" would be excessively broad because it would include "early voting, absentee ballots, machine voting, and paper ballots, among other things").

Appellants' "overall program of consumer debt relief" casts a vastly wide net. In truth, SPLNV is attempting to circumvent the single-subject rule by impermissibly phrasing the Initiative's purpose or subject in terms of excessive generality.

- C. **The Initiative's provisions are not all functionally related and germane to the Initiative's true purpose of preventing predatory lending.**

Seeing through SPLNV's pretextual, excessively general, proposed single subject, it is evident that the Initiative's true overarching purpose or subject is *preventing predatory lending*. See discussion, *supra*, at pages 12-16.<sup>11</sup> Once an initiative's purpose or subject is determined, the Court "then determine[s] if each provision is functionally related and germane to each other and the initiative's purpose or subject." *Helton*, 512 P.3d at 314 (citing *Heller*, 122 Nev. at 907-09, 141 P.3d at 1243-45; *Las Vegas Taxpayer*, 125 Nev. at 180, 208 P.3d at 439). "[C]hanges are functionally related and germane to each other [if] they work together to [serve the subject] and the effectiveness of one change would be limited without the other." *Id.* at 315.

Here, multiple provisions are not functionally related and germane to the Initiative's subject of *preventing* predatory lending—i.e., the *creation* of high-interest consumer loans. The asset protection provision does not serve this subject. By SPLNV's own admission, the goal of that provision is to *relieve existing* consumer debt. The proposed changes in no way *prevent* the predatory lending that creates the debt in the first place. This is accomplished through the rate caps. (See AOB at 17-18 ("This Petition specifically targets interest rates and the follow-on

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<sup>11</sup> Under the Court's de novo review, it is this Court's "obligation to first independently identify the subject, not just adopt the argument of one party or the other." *Helton*, 512 P.3d at 314 n.3.

effects of ongoing indebtedness after a high-interest loan becomes a debt trap, by means of improved asset protections for consumers.".)

The Initiative also proposes changes to consumer litigation funding transactions under NRS 604C. SPLNV seeks to impose the 36% rate cap. (*See* I AA 164.) However, consumer litigation funding does not involve lending or the making of a loan; nor is it predatory. Accordingly, the proposed changes to NRS 604C do not serve the subject of preventing predatory lending.

Predatory lending involves "unscrupulous practices carried out by lenders to entice, induce, mislead, and assist borrowers toward taking out loans they are unable to pay back reasonably or must pay back at a cost that is extremely above the market rate." *See Predatory Lending Definition*, Investopedia.com, [https://www.investopedia.com/terms/p/predatory\\_lending.asp](https://www.investopedia.com/terms/p/predatory_lending.asp) (last visited May 10, 2024). "Predatory lenders take advantage of borrowers' circumstances or lack of knowledge." *Id.*; *see also Henry v. Lehman Commer. Paper, Inc. (In re First All. Mortg. Co.)*, 471 F.3d 977, 984 (9th Cir. 2006) ("As the subprime home mortgage industry has grown over the last decade, increasing attention has focused on predatory lending abuses—the practice of making loans containing interest rates, fees or closing costs that are higher than they should be in light of the borrower's credit and net income, or containing other exploitative terms that the borrower does not comprehend.").

Chapter 604C makes clear, however, that consumer litigation funding transactions *are not loans*:

Nothing in this Chapter shall be construed to cause any consumer litigation funding transaction conforming to this chapter to be deemed a loan or to be subject to any of the provisions of law governing loans. A consumer litigation funding transaction that complies with this chapter is not subject to any other statutory or regulatory provisions governing loans . . . .

NRS 604C.220(2); *see also MoneyForLawsuits V Ltd. P'ship v. Rowe*, No. 4:10-CV-11537, 2012 U.S. Dist. LEXIS 43558, at \*33 (E.D. Mich. Jan. 23, 2012) (finding that a consumer litigation funding transaction was not a loan where the funding company's right to payment was contingent upon the success and recovery in the underlying lawsuit); *Cash4Cases, Inc. v. Brunetti*, 2018 NY Slip Op 08360, ¶ 1, 167 A.D.3d 448, 449, 90 N.Y.S.3d 154, 155 (App. Div. 1st Dept.) (A consumer litigation funding transaction "such as the agreement at issue here are not loans, because the repayment of principal is entirely contingent on the success of the underlying lawsuit.").

Simply put, litigation funding is an entirely different animal. A "consumer litigation funding transaction" is a "*nonrecourse transaction* in which: [] [a] consumer litigation funding company provides consumer litigation funding to a consumer . . .; and [t]he consumer assigns to the company *a contingent right* to receive an amount of the potential proceeds of a settlement, judgment award or

verdict obtained in the legal claim of the consumer." NRS 604C.100 (emphasis added). The "Consumer" in this context is "a natural person who[] . . .[h]as a pending legal claim." NRS 604C.060. "[T]he amount to be paid to the company . . . [is] set as a predetermined amount based upon intervals of time from the funding date through the resolution date." NRS 604C.310. "The amount must not exceed the funded amount plus charges not to exceed a rate of 40 percent annually." *Id.* "All proceeds of the legal claim [are] disbursed via the trust account of the attorney or a settlement fund established to receive the proceeds of the legal claim on behalf of the consumer." NRS 604C.350(2)(c). "The attorney follow[s] the written irrevocable instructions of the consumer with regard to the consumer litigation funding transaction." NRS 604C.350(2)(d). "The attorney is obligated to disburse money from the legal claim and take any other step to ensure that the terms of the consumer litigation funding contract are fulfilled." NRS 604C.350(2)(e). The funded amount and charges are paid only from the proceeds of the consumer's legal claim, and are paid only to the extent there are available proceeds from the claim. *See* NRS 604C.360(4). Only attorney and Medicare liens take priority over a consumer litigation funding company's lien. *See* NRS 604C.220(3).

Accordingly, litigation funding transactions do not put consumers in a position where they are unable to reasonably pay back the funding. Personal net income, credit worthiness and ability to repay are irrelevant because their funding is provided

on a nonrecourse basis. The amount is paid only from the proceeds of the consumer's legal claim and only to the extent there are available proceeds from the claim.

Litigation funding companies also cannot take advantage of their consumers because the consumer's personal-injury lawyer stewards the transaction. Chapter 604C requires that a consumer litigation funding contract "[b]e written in a clear and comprehensible language that is understandable to an ordinary layperson." NRS 604C.350(1)(a). The contract must also contain a "written acknowledgement by the attorney retained by the consumer in the legal claim" attesting that "the funded amount and any charges and applicable fees relating to the consumer litigation funding have been disclosed to the consumer." NRS 604C.350(2)(a).

Consumer litigation funding under Chapter 604C is *not* predatory lending. Accordingly, SPLNV's proposed 36% rate cap on these transactions is not functionally related and germane to the Initiative's true purpose of preventing predatory lending.

**D. Even if the Court were to adopt SPLNV's proposed single subject of "an overall program of consumer debt relief," the provisions are still not all functionally related and germane to even this subject.**

The proposed rate cap on consumer litigation funding transactions does not serve the purpose of consumer debt relief. Litigation funding does not create

consumer debt.<sup>12</sup> A consumer in a litigation funding transaction does not incur a personal duty or obligation to pay the company money. The transaction is nonrecourse. The consumer does not personally owe anything if there are no proceeds from the legal claim. *See* NRS 604C.360(4). Upon executing the consumer litigation funding contract, the consumer assigns to the company the contingent right to receive an amount of potential proceeds obtained from the consumer's legal claim. The assignment gives the company a prioritized lien in the proceeds. The consumer also irrevocably instructs her attorney with regard to the transaction; this includes the attorney assuming the obligation of disbursing money from the legal claim and taking the steps necessary to ensure the terms of the funding contract are fulfilled.

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<sup>12</sup> "A debt is a lawful duty of one person to pay money to another." *Bouvier Law Dictionary Debt (debtor or creditor)* (Desk ed.). "Consumer debt is debt incurred for purposes not connected to a business or profits." *Bouvier Law Dictionary Consumer Debt* (Desk ed.); *see also* NRS 97B.060 ("'Consumer debt' means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment."); *Aspen Skiing Co. v. Cherrett (In re Cherrett)*, 873 F.3d 1060, 1067 (9th Cir. 2017) ("'Consumer debt' is defined as 'debt incurred by an individual primarily for a personal, family, or household purpose.' 11 U.S.C. § 101(8)."); *Slenk v. Transworld Sys.*, 236 F.3d 1072, 1074 (9th Cir. 2001) ("The [Fair Debt Collection Practices Act] defines a consumer debt as, 'any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the . . . property . . . which [is] the subject of the transaction [is] primarily for personal, family, or household purposes. . . .'" (alterations in the original)).



Accordingly, in executing the contract, the consumer has personally satisfied her payment obligation. For these reasons, a consumer litigation funding transaction does not create consumer debt. SPLNV's proposed change to Chapter 604C is functionally unrelated to the Initiative's purported purpose of relieving consumer debt.

The change to 604C is also functionally unrelated to the asset protection provision, which intends to provide consumer debt relief by protecting a consumer's assets from judgment collection by a predatory lender. The 604C rate cap does not work together with the asset protection provision to relieve consumer debt; it is not the case that the effectiveness of the asset protection provision would be limited without the change to 604C. Again, consumer funding transactions do not create consumer debt. Moreover, a consumer litigation funding company will not obtain a personal judgment against the consumer because the transaction is nonrecourse. Accordingly, there is no need for asset protection in a litigation funding transaction. These two changes (asset protection and the 604C rate cap) are not connected in any way and do not pertain to each other and to the subject of an overall program of consumer debt relief. *See Helton*, 512 p.3d at 315.

In addition, as discussed above, the proposed asset protection provision is expansive in scope and impacts virtually all judgment collections—even collection that is completely unrelated to *consumer* debt. *See* discussion, *supra*, at pages 12-

16. The provision increases the exemptions from execution for virtually all judgment debtors. This is *general* debt relief and far exceeds the scope of what could be classified as *consumer* debt relief.<sup>13</sup>

In *Heller*, the primary subject of the initiative was eminent domain. It followed that, "with respect to this initiative, every provision must be 'functionally related' and 'germane' to the subject of eminent domain." 122 Nev. at 907, 141 P.3d at 1244. Section 8 of the initiative addressed government actions that caused substantial economic loss to property rights. The Court emphasized that, "[a]lthough this section would . . . apply to many inverse condemnation cases [(the constitutional equivalent of eminent domain)], it would also apply to myriad other government actions that do not fall even within the most broad definition of eminent domain." *Id.* at 909, 141 P.3d at 1244-45. The Court concluded that, "[b]ecause of the far-reaching impact of the section on government actions completely unrelated to eminent domain, the fact that this section w[ould] also affect inverse condemnation [wa]s insufficient to render section 8 functionally related or germane to eminent domain." *Id.* at 909, 141 P.3d at 1245. Accordingly, this Court held that, "although

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<sup>13</sup> As just one example, a boiler-room scam defrauds an elderly woman out of a million dollars. She obtains a judgment against the fraudsters for securities fraud, deceptive trade practices and elder abuse. She seeks to collect. Under the Initiative's asset protection provisions, these individual judgment debtors are also relieved from satisfying this debt.

the initiative address[ed] a primary subject, eminent domain, it embrace[d] more than one subject in light of sections 1 and 8."<sup>14</sup> *Id.*

Like *Heller*, the Initiative's asset protection provision has far reaching impact on judgment collection that has nothing to do with the purported subject of consumer debt relief. The Initiative thus embraces more than one subject in violation of NRS 295.009's single-subject requirement.

**E. SPLNV's Description of Effect is legally insufficient because it fails to provide a straightforward summary of the Initiative's goals and how it intends to achieve those goals.**

The District Court considered the various challenges to the Description of Effect, but in light of its conclusion that the Initiative violated the single-subject rule, the District Court did not "reach the Plaintiffs' remaining arguments." (*See* IV AA 771 n.1.) If this Court similarly concludes that the Initiative violates the single-subject rule, it too does not need to address the legal sufficiency of the Description of Effect. If, however, this Court determines that the Initiative complies with the single-subject rule, then the sufficiency of the Description of Effect needs to be addressed. The case should be remanded to the District Court for this determination. *See Douglas Disposal, Inc. v. Wee Haul, LLC*, 123 Nev. 552, 557 n.6, 170 P.3d 508, 512 n.6 (2007) (providing that an appellate court need not reach issues

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<sup>14</sup> Section 1 created a broad new class of fundamental rights and also did not deal with the subject of eminent domain. *See Helton*, 122 Nev. at 908, 141 P.3d at 1244.

not addressed by the district court). If this Court ultimately considers this issue, it should rule that the Description of Effect is legally insufficient under NRS 295.009(1)(b).

A "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.'" *Nevadans for Reprod. Freedom*, 2024 Nev. LEXIS 19, at \*14 (quoting *Helton*, 512 P.3d at 316). "The purpose of the description of effect is to inform signatories to the initiative petition about the petition's subject." *Helton*, 512 P.3d at 318 n.6.

SPLNV's purported single subject is "an overall program of consumer debt relief." For the reasons previously discussed, however, this overarching purpose cannot be gleaned from the Description of Effect. *See* discussion, *supra*, at pages 12-16. Accordingly, the Description of Effect does not provide a "straightforward" summary of what the Initiative is designed to achieve. The Description of Effect also fails to provide a straightforward summary of how the Initiative intends to reach the goal of consumer debt relief. The description fails to explain that the Initiative will modify consumer litigation funding transactions—which do not involve predatory loans and do not contribute to consumer debt. Voters will have no idea that their access to litigation funding could be impacted. *See Helton*, 512 P.3d at 321 (Cadish, J., dissenting) ("The brevity of the description of effect does not grant the

initiative proponents the right to hide the goals of the initiative petition or mislead the public on how the initiative seeks to fulfill those goals.").

SPLNV's Description of Effect is legally insufficient under NRS 295.009(1)(b) because it fails to provide a straightforward summary of the Initiative's goals and how it intends to achieve those goals.

## **VII. CONCLUSION**

Respondents Preferred and ARC ask this Court to uphold the District Court's order finding that the Initiative violates NRS 295.099's single-subject rule. Further, in the event the Court considers the Description of Effect, it should find the Description of Effect legally insufficient under NRS 295.009(1)(b). Alternatively, the consideration of the sufficiency of the Description of Effect can be remanded to the District 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 Microsoft® Word for Microsoft 365 MSO (Version 2403 Build 16.0.17425.20176) 64-bit in 14 point font size and Times New Roman.

I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 9,388 words.

Finally, I hereby certify that I have read this RESPONDENTS' ANSWERING 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

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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.

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## CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May, 2024, I have caused a true and correct copy of the foregoing RESPONDENTS' ANSWERING BRIEF to be served upon all counsel of record by electronically filing the document using the Supreme Court of Nevada's electronic filing system.

By: /s/ Cynthia Grinzivich  
an Employee of REISMAN SOROKAC