

**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 RESPONSE TO NEVADANS
FOR THE COMMON GOOD'S AMICUS BRIEF**

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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.

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

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

DATED this 24th day of May 2024.

HOLLAND & HART LLP

By: 

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I. INTRODUCTION

Nevadans for the Common Good's (NCG's) amicus brief adds nothing to this Court's preelection review of the challenged Petition. NCG's stated purpose is "to provide a voice to the common Nevadans and borrower[s] effected [sic] by the policies contained in the initiative." NCG Brief, at vii. This Court's review is limited to whether the Petition satisfied NRS Chapter 295's procedural requirements. The proposed policies that may or may not support the substance of the challenged Petition are irrelevant.

NCG moreover mischaracterizes the legislative history and background of SB 290 (Nev. 2023), now codified as NRS Chapter 604D. NCG describes the legislation as a "loophole....designed to evade the existing consumer protection" laws. Not so. SB 290's legislative history makes clear that its provisions are specifically designed to protect consumers and create an option for Nevada workers to access their own earned wages sooner than a typical payday cycle otherwise allows.

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II. ARGUMENT

A. The Petition's Supposed Policy Objectives Are Irrelevant to a Pre-Election Challenge.

“In determining whether a ballot initiative proponent has complied with NRS 295.009, it is not the function of this Court to judge the wisdom of the proposed initiative.” *Education Initiative v. Cmte. to Protect Nev. Jobs*, 129 Nev. 35, 41, 293 P.3d 874, 878 (2013) (citations omitted). “Preelection initiative challenges are properly considered when they allege procedural defects or assert that a measure does not satisfy an explicit constitutional or statutory requirement for initiatives.” *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 892, 141 P.3d 1224 (2006).

The district court held that the challenged Petition violated NRS 295.009(1)-(2)'s single-subject rule. IV AA 808-812. The district court did not examine or rule on the wisdom or the merits of the challenged Petition's proposed policy objectives. Nor would it have been proper for the district court to do so: indeed, Appellants have themselves argued as much. III AA 514-515 (Feldman Omnibus Response, arguing in district court that “[c]hallenges to the substance of a proposed initiative petition, however, are not ripe for review at the pre-election stage”); App. Op. Br.,

at 9 (arguing on appeal that “[i]n determining whether a ballot initiative proponent has complied with NRS 295.009, it is not the function of this Court to judge the wisdom of the proposed initiative.” (quoting *Helton*, 512 P.3d at 316)).

It is for Nevada voters to evaluate and decide whether they support or oppose the Petition’s proposed policy objectives. As a prerequisite for the voters to meaningfully evaluate such policies, the Petition must satisfy the procedural requirements the Legislature has enacted to protect an informed Petition process. *Helton v. Nev. Voters First PAC*, 138 Nev. Adv. Op. 45, 512 P.3d 309, 316 (2022) (NRS Chapter 295’s procedural rules are meant to “prevent voter confusion and promote informed decisions”).

B. NCG’s Amicus Brief Mischaracterizes the Legislative Intent Behind SB 290.

NCG also uses its amicus brief as an opportunity to brazenly mischaracterize SB 290, legislation that the challenged Petition seeks to repeal. NCG Amicus Br., at 7 n. 7. NCG describes the legislation as one of several examples of legislation “designed to evade the existing consumer protections.” *Id.* NCG’s description of both the text and

legislative history of SB 290's earned wage access provisions is utterly untethered to both.

SB 290's legislative history demonstrates the Legislature's recognition that earned wage access services benefit and empower consumers. In committee, Majority Leader Nicole Cannizzaro testified that earned wage access services offer "workers an opportunity to access net pay they have already earned before the traditional pay day, helping them to address financial emergencies or unexpected expenses." *Hearing on SB 290*, 82d. Leg., Sen. Cmte. on Comm. and Labor (April 5, 2023) at 41. The Majority Leader further stated SB 290 "leads the nation in regulating a new and promising market alternative that has the power to bring much-needed relief to hardworking Nevadans, particularly in these difficult times of record high inflation." *Id.*, at 42. In particular, the Majority Leader specifically called out the bill's consumer protections: "These nonrecourse aspects of [earned wage access] regulations are an important consumer protection feature that distinguishes [earned wage access] products from other predatory and high-interest financial products and loans." *Id.*, at 43.

Reflecting the Legislature’s broad consensus around SB 290’s warm reception, Assemblyman Toby Yurek stated the bill offered “a way to leverage technology to give individuals, particularly individuals who....are living paycheck to paycheck...quick, ready access to their money and save them from what we know are some very harming and damaging predatory lending practices.” *Hearing on SB 290*, 82d. Leg. Nev., Assm. Cmte. on Comm. and Labor (May 31, 2023) at 11. Committee Chair Elaine Marzola expressed her support for SB 290 “[a]s someone who raised her son as a single mom putting herself through school, I was the person who lived paycheck to paycheck and did not know how I was going to pay things at times. I appreciate your bringing [SB 290] forward without fees, without a recourse, and without late fees...it gives individuals an opportunity to get back on their feet.” *Id.*, at 11.

III. CONCLUSION

This Court should not attempt to decide the wisdom of the policy objectives that the amicus has ascribed to the proposed Petition. What is before this Court is whether the Petition satisfies NRS 295.009’s procedural rules. It is these rules, prescribed by the Legislature, that best

protect the voters' rights to participate in a transparent and informed Petition process.

Contrastingly, NCG's amicus brief invokes supposed policy objectives that are irrelevant to this review. The amicus brief, goes on to gratuitously mischaracterize financial services that the Petition would restrict as a consequence of its excessively generalized policy goals. NCG's improper and inaccurate amicus brief deserves no weight or deference from this Court.

DATED this 24th day of May 2024.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1)(b) and 25(1)(d), I, the undersigned, hereby certify that I electronically filed the foregoing **RESPONDENT DAILYPAY, INC.'S RESPONSE TO NEVADANS FOR THE COMMON GOOD'S AMICUS 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 24th day of May, 2024.

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

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