

**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.

Electronically Filed  
Case No. 88526 May 24 2024 05:35 PM  
Elizabeth A. Brown  
Clerk of Supreme Court  
District Court Case No. 24 OC 00018  
Lead Case No.: 24 OC 00018  
1B

Consolidated with:  
Case No.: 24 OC 00021 1B  
Case No.: 24 OC 00023 1B  
Case No.: 24 OC 00029 1B

**RESPONDENTS PREFERRED CAPITAL FUNDING – NEVADA, LLC'S,  
AND ALLIANCE FOR RESPONSIBLE CONSUMER LEGAL FUNDING'S  
RESPONSE TO  
BRIEF AMICUS CURIAE OF NEVADANS FOR THE COMMON GOOD**

---

Joshua H. Reisman, Esq. (Nevada Bar No. 7152)  
Elizabeth M. Sorokac, Esq. (Nevada Bar No. 8270)  
Michael R. Kalish, Esq. (Nevada Bar No. 12793)

REISMAN SOROKAC  
8965 South Eastern Avenue, Suite 382  
Las Vegas, Nevada 89123  
Telephone: (702) 727-6258

*Attorneys for Respondents Preferred Capital Funding – Nevada, LLC, and Alliance  
for Responsible Consumer Legal Funding*

**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

//

//

//

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

DATED this 24th day of May, 2024.

**REISMAN SOROKAC**

By: /s/ Joshua H. Reisman, Esq.  
Joshua H. Reisman, Esq.  
Nevada Bar No. 7152  
REISMAN SOROKAC  
8965 S. Eastern Ave., Suite 382  
Las Vegas, NV 89123  
(702) 727-6258  
email: jreisman@rsnvlaw.com  
*Attorney for Respondents*

**TABLE OF AUTHORITIES**

**Cases**

*Helton v. Nev. Voters First Pac*  
138 Nev. Adv. Rep. 45, 512 P.3d 309 (Nev. 2022) . . . . . 5

*Nevadans for Reprod. Freedom v. Washington*  
No. 87681, 2024 Nev. LEXIS 19, 140 Nev. Adv. Rep. 28, (April 18, 2024)  
(en banc). . . . . 5

**Statutes**

NRS § 604C.060. . . . . 3

NRS § 604C.100. . . . . 2, 3, 4

NRS § 604C.350. . . . . 3

NRS § 604C.360. . . . . 2, 4

NCG's amicus curiae brief makes Preferred and ARC's case for them.<sup>1</sup> The brief's argument regarding the "debt treadmill" and unsupported anecdotes regarding the effects of predatory lending only confirm that the Initiative's<sup>2</sup> proposed changes to consumer litigation funding are not functionally related and germane to the purported purpose of "providing relief from the spiral of debt that traps Nevadans." (Br. Amicus Curiae at 4.) Litigation funding (Preferred and ARC's business) in no way contributes to the debt trap described in the brief. Indeed, to the contrary, it provides a lifeline to personal-injury plaintiffs that helps them avoid this trap.

NCG argues that "[f]ixing Nevada's predatory lending market requires both the interest rate cap, and the debt collection protections of S-01-2024." *Id.* at 6. According to NCG, "[p]redatory lending occurs when high interest rates ultimately lead to wage garnishment because the loan was designed never to be repaid, and set up to fail." *Id.* "Lenders engage in a 'set up to fail' business model, more commonly referred to as predatory lending, that will benefit from the borrower's inability to afford the loan." *Id.* at 5. "The exorbitant interest rates ensure high default rates, the cycle of lawsuits for the debts, and garnishments." *Id.* NCG contends that a rate cap "will force lenders to stop providing loans designed to fail." *Id.* at 6. It further

---

<sup>1</sup> NCG is Nevadans for the Common Good. Preferred is Respondent Preferred Capital Funding-Nevada, LLC. ARC is Respondent Alliance for Responsible Consumer Legal Funding.

<sup>2</sup> Initiative Petition S-01-2024.

maintains that "[w]ithout debt collection measures like S-01-2024, there is an incentive for companies to first provide a loan they know the borrower cannot repay and then profit off the borrower with aggressive collection tactics." *Id.* at 8-9.

NCG devotes much of its brief to "the perspective of everyday Nevadans" who are caught on the "debt treadmill"<sup>3</sup>: the salesman with "three collection lawsuits filed against him, and a monthly payment obligation ten times the original amount he had sought to bridge[,] "*id.* at 3; the "66-year-old homecare provider" with a payday loan that "snowballed until she found herself being sued for collection[,] "*id.* at 9; the "single mom with two daughters" who refinanced her short-term loan and has a "lawsuit to garnish her wages[,] "*id.*; and the "63-year old single woman" who "[d]ue to the combined effects of high-interest loans and wage garnishment, [] is now seeking Chapter 7 bankruptcy." *Id.* at 9-10.

While these unsupported anecdotes starkly depict the devastating effects of predatory lending, they simply have no resemblance to consumer litigation funding transactions. Consumer litigation funding is not "set up to fail." Indeed, by law, the transaction is *non-recourse*. *See* NRS 604C.100. The funded amount and charges are paid only from the consumer's legal claim and only to the extent there are available proceeds from the claim. *See* NRS 604C.360(4). The consumer does not

---

<sup>3</sup> (Br. Amicus Curiae at 2, 6.)

personally owe anything if there are insufficient proceeds from the legal claim. *See id.*

Accordingly, the funding company does not benefit from the consumer's inability to satisfy the funding. The consumer cannot be held in default for failure to pay—there is no payment obligation outside of the proceeds of the legal claim, if any. And failing to satisfy the funded amount does not result in a personal judgment against the consumer, debt collection or wage garnishment.

To illustrate this difference between predatory lending and consumer litigation funding transactions, Respondents offer an anecdote of their own. The following is a hypothetical example (but an accurate one under NRS Chapter 604C) of a consumer litigation funding scenario in which the funded amount and charges remain unsatisfied.

A person is injured in an accident and has a personal-injury claim. *See* NRS 604C.060. She engages an attorney to pursue the legal claim. She misses work due to her injuries and ongoing medical treatment. As a result, she has trouble paying her bills. She obtains consumer litigation funding in order to pay her rent, food and gas while her litigation progresses. *See* NRS 604C.100. Her attorney assists and advises her in obtaining the funding. *See* NRS 604C.350(2). She continues her medical treatment and ultimately her case settles. Unfortunately, the settlement is not enough to fully cover both her medical expenses and the funded amount and

charges. The litigation funding company loses money on the transaction. She personally owes nothing, however, and the funding company has no recourse against her to collect anything further.<sup>4</sup> *See* NRS 604C.100; NRS 604C.360(4).<sup>5</sup>

This realistic example of an unsatisfied consumer litigation funding transaction in no way resembles NCG's lamentable examples of predatory lending situations. Consumers of litigation funding are not set up to fail, held in default, pursued in collections, garnished, and driven into bankruptcy. Instead, their personal expenses are covered—the pressure and anxiety released—while their lawsuit and medical treatment progress. Ideally, this adds value to their legal claim. However, if the claim is ultimately insufficient to satisfy the funded amount, they have no personal liability. For personal-injury plaintiffs needing to sustain themselves, litigation funding offers a better alternative than high-interest, personal, consumer

---

<sup>4</sup> Consumers can be personally liable, however, if they "have violated a[] material term of th[e] contract or [] have knowingly provided false information or committed fraud against [the funding company]." NRS 604C.360(4)

<sup>5</sup> The above narrative presents a worst-case scenario. The goal with litigation funding is to provide personal-injury plaintiffs with a lifeline so they are not forced to settle their claims, early, for far less than their true value. The funds received allow plaintiffs to pay their bills while they are unable to work and are still pursuing their claim for just compensation—which can take years to resolve. Ideally, if plaintiffs have time to continue to treat and to develop their cases and damages, this will increase the value of their legal claims. The cases will hopefully settle for an amount that satisfies all lien holders and *also* puts money in their pockets. (*See* III AA 588-89.)



loans. Indeed, it helps them *avoid* the "debt treadmill" that is the focus of NCG's brief.

Regulating consumer litigation funding transactions will in no way alleviate NCG's debt treadmill. It will likely exacerbate it by making litigation funding *less* available to consumers in Nevada—causing them to turn to predatory lenders. Accordingly, putting a 36% rate cap on consumer litigation funding is not functionally related and germane to the purposes of preventing predatory lending and relieving consumer debt. The Initiative thus embraces more than one subject in violation of NRS 295.009's single-subject requirement. *See Nevadans for Reprod. Freedom v. Washington*, No. 87681, 2024 Nev. LEXIS 19, at \*11, 140 Nev. Adv. Rep. 28 (2024) (stating that to comply with the single-subject requirement, the initiative petition's proposed changes must be "functionally related and germane to each other and the overall subject of the initiative" (citing *Helton v. Nev. Voter First Pac.*, 512 P.3d 309, 315 (2022))).

## 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 does not exceed 5 pages.

Finally, I hereby certify that I have read this **RESPONDENTS PREFERRED CAPITAL FUNDING – NEVADA, LLC'S, AND ALLIANCE FOR RESPONSIBLE CONSUMER LEGAL FUNDING'S RESPONSE TO BRIEF AMICUS CURIAE OF NEVADANS FOR THE COMMON GOOD** 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 24th day of May, 2024.

By: /s/ Joshua H. Reisman, Esq.  
Joshua H. Reisman, Esq.  
Nevada Bar No. 7152  
REISMAN SOROKAC  
8965 S. Eastern Ave., Suite 382  
Las Vegas, NV 89123  
(702) 727-6258  
email: jreisman@rsnvlaw.com  
*Attorney for Respondents*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24th day of May, 2024, I have caused a true and correct copy of the foregoing **RESPONDENTS PREFERRED CAPITAL FUNDING – NEVADA, LLC'S, AND ALLIANCE FOR RESPONSIBLE CONSUMER LEGAL FUNDING'S RESPONSE TO BRIEF AMICUS CURIAE OF NEVADANS FOR THE COMMON GOOD** 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