

**In the
Supreme Court of the State of Nevada**

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Elizabeth A. Brown
Clerk of Supreme Court

DAILYPAY, INC., et al.,

Appellants,

vs.

KATE FELDMAN, an individual;
STOP PREDATORY LENDING
NV, a Nevada nonprofit
corporation; FRANCISCO V.
AGUILAR, in his official capacity as
Nevada Secretary of State,

Respondents.

Case No.: 88557

District Court Case No.:
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

**RESPONSE TO MOTION FOR SUMMARY REVERSAL OR
VACATUR**

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MEMORANDUM OF POINTS AND AUTHORITIES

Appellants Nevadans for Financial Choice and Christina Bauer (“Movants”) load much more significance onto the administrative process of statutory codification than it can logically or equitably bear. Certainly, above all, the independent actions of the Legislative Counsel Bureau (“LCB”) in its tasks of numbering, renumbering, ordering, and re-ordering the provisions of the Nevada Revised Statutes cannot be understood (or permitted) to interfere with the people’s fundamental constitutional rights to the initiative process in the manner Movants imagine.

On January 5, 2024 and January 24, 2024, Respondents Kate Feldman and Stop Predatory Lending NV (“Respondents,” or “Proponents”) filed two statutory initiatives with the Nevada Secretary of State. I AA 8–32; I AA 120–136.¹ In the prefatory material of each measure—not within either the substantive bodies of the measures or in their respective descriptions of effect—is the introductory phrase, “The Nevada Revised Statutes are hereby amended by adding thereto a new Chapter, to be designated Chapter 604D: Preventing Predatory Payday

¹ Citations to “AA” reference the Appellants’ Appendix filed in Docket 88526.

and Other Loans Act.” I AA 9, 121. At the time of filing, of course, there was no NRS Chapter 604D; the sequence of statutory chapters ended there with Chapter 604C.

Recently, LCB codified a different legislative measure, S.B. 290 (2023), as new NRS Chapter 604D. *See Feldman v. Aguilar, et al.*, No. 88526, Doc. 2024-17177. On the strength of this, Movants’ argument goes, the district court’s decision approving Petition S-03-2024 should be summarily reversed, because that act of codification somehow transforms the statutory initiative into a referendum, renders the appended text of S-02-2024 invalid for not including S.B. 2024, and moots the entire appeal under the *Munsingwear* doctrine.² That is quite a set of consequences for LCB staff to have caused, one would have to say.

But this is not a plausible legal argument. Apart from the obvious fact that the mention in the Petition of “a new Chapter, to be designated Chapter 604D” is clearly mere predicate to the substantive provisions of the proposal, Movants introduce an imaginary—but in their telling, fatal—risk to the constitutional right of initiative. Proponents were not privy, of course, to the precise codification plans of the LCB regarding

² See Mot. for Summary Reversal, at 1–6, 9.

S.B. 290, and neither (apparently) does LCB monitor the language of proposed statutory initiatives and act affirmatively in that arena to avoid codification issues.

This is largely because the kinds of issues raised by the recent codification of new NRS Chapter 604D in no way functions to transform statutory initiatives into referenda, or wreck the process of direct democracy, but rather create only ministerial matters that are easily resolved, and in fact are contemplated, by routine administrative practices and statutory processes. There are, in fact, simple resolutions to matters such as this that do not involve transforming, wrecking, or mooting.

In compiling and maintaining the Nevada Revised Statutes, LCB acts pursuant to NRS 220.120. In doing so, “[LCB] shall classify and arrange the entire body of statute laws in logical order throughout the volumes, the arrangement to be such as will enable subjects of a kindred nature to be placed under one general head, with necessary cross references.” NRS 220.120(3).

LCB, “in keeping Nevada Revised Statutes current, shall not alter the sense, meaning or effect of any legislative act, but may renumber sections and parts of sections thereof, change the wording of headnotes,

rearrange sections, change reference numbers or words to agree with renumbered chapters or sections, [etc.]” NRS 220.120(5).

LCB may, at its discretion, “create new titles, chapters and sections of Nevada Revised Statutes, or otherwise revise the title, chapter and sectional organization of Nevada Revised Statutes, all as may be required from time to time, to effectuate the orderly and logical arrangement of the statutes.” NRS 220.120(6)(a).

Furthermore, the Legislature has charged LCB with the ability to “add, revise, move or remove non-substantive definitions in titles, chapters and sections of Nevada Revised Statutes to effectuate the orderly and logical arrangement of the statutes, improve readability or reduce repetitious or lengthy words or phrases.” NRS 220.120(6)(b).

The renumbering, re-ordering, or other such administrative codification of state laws are expressly considered non-substantive ministerial tasks: “If the Legislative Counsel renumbers any section of Nevada Revised Statutes because the section has been moved, divided or combined with another section during the reorganization of the statutes or for any other reason, the citation to the previously assigned number in any legal document, publication, signage or in any other place shall be deemed to have the same meaning and legal effect as if the citation were

to the new number, regardless of how long it has been since the new number was assigned and regardless of any revisions made to the section after the assignment of the new number, unless another intent is otherwise specified.” NRS 220.120(7).³

In other words, in the simplest possible terms, should Initiative Petition S-03-2024 (or S-01-2024, for that matter) move forward, and should Proponents gather sufficient signatures for it to be submitted to the 2025 Nevada Legislature and then see it approved by the people at the 2026 General Election, more than two years from now, LCB will act under its statutory authority to resolve any numbering or ordering conflict “to effectuate the orderly and logical arrangement of the

³ Furthermore, as this Court has noted, “the Legislature enacts the actual laws of Nevada, while the Legislative Counsel Bureau ... codifies and classifies those laws as the Nevada Revised Statutes, grouping laws of similar subject matter together in logical order, but not itself exercising the legislative function.” *Taylor v. State*, 136 Nev. 885, 472 P.3d 195 (2020) (unpublished disposition). It would be curious to afford LCB the authority, in its administrative role as organizers of the physical code, to destroy the legislative capacity of the people, whose powers are coextensive with the Legislature’s. *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 914, 141 P.3d 1235, 1248 (2006) (“The people’s initiative power is coequal, coextensive, and concurrent with that of the Legislature; thus, the people have power that is legislative in nature.”) (quotation marks omitted).

statutes.”⁴ (If any concerns persist on the part of the Court about this process, it is urged to request an amicus brief by LCB on this issue, pursuant to NRAP 29(a).)

The recent codification of S.B. 290 does not, as Movants claim, turn the Petition into a referendum on that legislative act. What would that even mean, in functional terms? The district court’s findings remain accurate, that S-03-2024 does not change a single word of S.B. 290, regardless of where in the code either measure finally resides. IV AA 781. Because the Petition remains a stand-alone proposal, the “full text” of S.B. 290 remains unnecessary for S-03-2024 to be valid as filed, as the district court also found. IV AA 780–781. The description of effect does not mention any codification issues at all, and instead sticks entirely to substantive description, so Movant’s arguments in that respect are not well-taken either, and appear to be aimed at doing the work that should be the subject of the substantive appeal.

⁴ Which also raises the likelihood that, even if we strain to place Movants’ legal arguments in their best light, their concern is a *post-election* one, only worthy of consideration should S-03-2024 be enacted into law. This Court does not take up post-election concerns at this stage of the initiative petition process. *See Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 888, 141 P.3d 1224, 1228-31 (2006); *Fleischmann v. Aguilar*, No. 88307, 2024 WL 2703145, at *1 (Nev. May 24, 2024) (unpublished disposition).

Lastly, *Munsingwear* vacatur has no application here, as Movant’s merely passing reference seems to concede. Not only is *Munsingwear* vacatur rare, for good reason, it is only invoked where there have occurred obvious, intervening mooted events, like a respondent’s unilateral dismissal of complaint (*Selig v. Pediatric Specialty Care, Inc.*, 127 S. Ct. 3000 (2007)), or on account of the actual death of a petitioner during a criminal sentencing appeal (*Claiborne v. United States*, 127 S. Ct. 2245 (2007)). Movants raise no such event demonstrating mootness here, where a district court judge has decided the substantive pre-election claims made by Movants and their co-Appellants, and only the technical matter of codification is at issue.

Other than the easily-correctable statutory numbering matter, Movants present no explanation or authority for why this Court would be forced to summarily adjudicate—and reverse—the lower court’s decision on the grounds presented in this motion. Such summary treatment is quite rare, as Movants themselves informed the Court just six weeks ago while opposing Proponents’ motion to expedite the companion appeal to this one: “[T]his Court only submits appeals for summary adjudication on the district court briefing where the parties agree to do so,” because “[b]allot challenges are technical cases that deserve fulsome briefing and

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of June, 2024, a true and correct copy of **RESPONSE TO MOTION FOR SUMMARY REVERSAL** was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system:

By: /s/ Dannielle Fresquez
Dannielle Fresquez, an Employee of
BRAVO SCHRAGER LLP