

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAILYPAY, INC., a Delaware Corporation; NEVADANS FOR FINANCIAL CHOICE, a Nevada Political Action Committee; CHRISTINA BAUER, an individual,

Appellants,

vs.

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

Respondents.

Case No.: 88557

District Case No.: Electronically Filed
Lead Case No.: 24 OC 00021B
11:21 AM
Elizabeth A. Brown
Clerk of Supreme Court

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

Case No.: 24 OC 00023 1B

Case No.: 24 OC 00029 1B

**APPELLANT DAILYPAY, INC.'S OPPOSITION TO
RESPONDENTS' MOTION TO STRIKE**

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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 Appellants:

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

DATED this 11th day of June 2024.

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I. INTRODUCTION

DailyPay, Inc. (“DailyPay”) opposes Respondents Kate Feldman’s and Stop Predatory Lending NV’s Motion to Strike, filed June 10, 2024. Respondents’ Motion to Strike exalts form over substance. It attempts to misdirect this Court’s attention, because Respondents cannot dispute DailyPay’s contention that NRS 295.015 establishes the proper remedy to correct the challenged Petition’s manifest errors. Accordingly, DailyPay requests that this Court deny Respondents’ Motion to Strike under NRAP 2, and in the compelling interests of protecting an accurate, informed, and transparent initiative petition process.

II. ARGUMENT

This Court may, on its own or on a party’s motion, suspend NRAP’s provisions “to expedite its decision or for other good cause.” NRAP 2. This Court will not “exalt[] form over substance,” particularly in matters concerning judicial economy. *Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 285, 163 P.3d 462, 467 (2007). For example, this Court has denied a motion to strike a reply that was “untimely by two days.” *See, Order Denying Pet’n. for Writ of Mand., Edwards v. Eighth Judicial Dist. Ct.*, Case No. 51421 (Feb. 5, 2009). Similarly, in the related pending case

involving the same parties to this appeal, this Court allowed Nevadans for the Common Good to file an untimely amicus brief. *See*, Order Granting Mot., *Feldman v. Aguilar*, Case No. 88526 (May 17, 2024).

DailyPay’s non-opposition encourages a timely and efficient resolution to an issue concerning the Petition’s undisputed errors. Respondents acknowledge the challenged Petition incorrectly references NRS Chapter 604D, and that “[a]t the time of filing [the challenged Petition], of course, there was no NRS Chapter 604D.” Response to Mot. for Summary Reversal, Docket No. 88557 (June 3, 2024), at 4. But Respondents are wrong to dismiss these errors as insignificant and assert that another agency, the Legislative Counsel Bureau (LCB), should fix these errors later, after the misinformation has already been circulated to Nevada voters. *Id.* at 5 (asserting there are “simple resolutions to matters such as this” under NRS 220.120).

NRS 220.120(5) does not allow LCB to revise an initiative petition, and expressly provides that LCB “shall not alter the sense, meaning or effect of any legislative act.” NRS 220.120(5). Further, the Nevada Constitution mandates that if the Petition obtains the requisite number of signatures, it “shall be enacted or rejected by the Legislature *without*

change or amendment within 40 days” of the beginning of the Legislative Session. NEV. CONST., Art. 19, Sec. 2(3) (emphasis added). Thus, the Legislature enacted NRS 295.015 to requires an inaccurate Petition to be amended and re-filed before it is presented to voters. Once voters have acted on a measure containing erroneous information, it is too late. The Petition must be adopted or rejected as written.

This Court enforces NRS Chapter 295’s rules not because they impair direct democracy, but because “the Nevada Constitution specifically empowers the Legislature to provide by law for procedures to facilitate the...people’s power to propose statutory and constitutional amendments by initiative petition.” *Cegavske v. Hollowood*, 138 Nev. Adv. Op. 46, 512 P.3d 284, 289. Thus, this Court upholds “statutory requirements for initiative petitions that might otherwise be considered improper limitations on the ‘power to propose’ and [has] barred initiative petitions that failed to meet those statutory requirements.” *Id.* (citations omitted). In short, NRS 295.015(2) facilitates direct democracy, rather than frustrating it.

If the Petition moves forward despite its manifest errors, Nevada voters will be asked to make a decision based on misinformation. NRS

295.015's requirement that a petition be amended and re-filed prevents this harm. And resolving this question now not only promotes judicial economy but facilitates direct democracy by ensuring an accurate, informed, and transparent initiative process. *Cook v. Maher*, 108 Nev. 1024, 1025 n.1, 842 P.2d 729, 730 n.1 (1992) (granting a request for an "immediate decision" without briefing under NRAP 2 based on a review of the record on appeal, and after "the parties adequately apprised this Court of the uncontested facts and their respective legal contentions.").

III. CONCLUSION

Voters are entitled to accurate information. To protect this right, the Legislature has established the procedural remedy for correcting an inaccurate initiative petition—it must be amended and re-filed under NRS 295.015(2). It is the petition circulators, not LCB, and not this Court, who are responsible for the accuracy of their Petition.

NRS 295.015(2) requires the Petition to be corrected ***before*** it is circulated to voters, not after. And the Petition should be corrected sooner, rather than later, in the interests of judicial economy and to safeguard Nevadans' fundamental right to enact, amend, and repeal laws at the ballot.

DATED this 11th day of June 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 **OPPOSITION TO MOTION TO STRIKE** 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 June 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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