

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; ACTIVEHOURS, INC., a Delaware Corporation; and STACY PRESS, an individual,

Appellants,

v.

FRANCISCO V. AGUILAR IN HIS OFFICIAL CAPACITY AS NEVADA SECRETARY OF STATE; KATE FELDMAN, an individual; and STOP PREDATORY LENDING NV, a Nevada Nonprofit Corp.,

Respondents.

Case No. 88557

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Elizabeth A. Brown
Clerk of Supreme Court

**REPLY IN SUPPORT OF
MOTION FOR SUMMARY
REVERSAL OR, IN THE
ALTERNATIVE,
MUNSINGWEAR VACATUR**

I. INTRODUCTION

Faced with the unenviable position of defending a mooted petition, Respondents contend that this Court can simply direct the Legislative Counsel Bureau to renumber the now-existing NRS Chapter 604D to solve the Petition's various substantive issues. In effect, they contend that the codification of NRS Chapter 604D created only a "ministerial" issue, not a substantive one. Yet, Respondents distract from the factual situation this Court, the parties, and the general public now face regarding this Petition. Respondents cannot waive away the plain truth of this case: Both the Petition and its description of effect materially misinform

the public. Any prospective signer of this Petition or future voter who bothers to look at the existing Chapter 604D could not possibly understand what this Petition now proposes. They are necessarily led to conclude that this Petition would repeal the currently-existing Chapter 604D, which concerns Earned Wage Access Services. Although no fault of Respondents, they can point to nothing in the Petition or the description of effect that informs the public of what the Petition actually does relative to the now-existing Chapter 604D. Thus, in light of the intervening codification of NRS Chapter 604D, this Court should summarily reverse the district court's order.

II. ARGUMENT

A. **Summary Reversal is Appropriate as the Codification of SB 290 as NRS Chapter 604D Illustrates the Petition's Failure to Comply with the Description-of-Effect and Full-Text Requirements.**

The intervening events have only exacerbated the Petition's already-defective description of effect. Because there is already an existing NRS Chapter 604D, the public is misled by a petition which proposes to enact "Chapter 604D: Preventing Predatory Payday and Other Loans Act." (*Compare* 3 AA 460 (reproducing the Petition's description of effect), *with* Mot. at Ex. 1 (reproducing the codified NRS Chapter 604D)). The Petition's description of effect thus fails as a matter of law. *See Prevent Sanctuary Cities v. Haley*, No. 74966, 2018 WL 2272955, at *4 (Nev. May 16, 2018) (explaining that while "the description at issue here describes

the prohibitory effect of the initiative, the impact of that prohibition on existing policies and laws is not described").

Respondents' cursory arguments cannot salvage the situation. First, Respondents disclaim the importance of Section 1 of the Petition – providing "[t]he Nevada Revised Statutes are hereby amended by adding thereto a new Chapter, to be designated Chapter 604D: Preventing Predatory Payday and Other Loans Act, to read as follows" (3 AA 450) – as irrelevant "prefatory material." (Opp'n at 3-4). But that introduction is key to determining both the Petition's purpose which relates to both its single subject and description of effect. *See Nevadans for Reprod. Freedom v. Washington*, 140 Nev., Adv. Op. 28, 546 P.3d 801, 806 (2024) ("In determining an initiative's purpose or subject, [courts] look to the initiative's textual language and the proponents' arguments."). Respondents cannot now ignore the specific language they included in the Petition –no rule or statute required Respondents to specify the specific chapter the Petition would create but they chose to do so.¹

Next, Respondents blithely assert that this is a mere ministerial action that the Legislative Counsel Bureau may change. (Opp'n at 4-8.) Their argument misses the mark. Descriptions of effect serve to "prevent voter confusion and promote informed decisions." *Las Vegas Taxpayer Accountability Comm. v. City Council*,

¹ And this is not the Petition's only reference to Chapter 604D. Section 16 does so as well.

125 Nev. 165, 183, 208 P.3d 429, 441 (2009) (quoting *Nevadans for Nev. v. Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006)). But even assuming this is a ministerial act (even though the Legislature cannot make any changes to a proposed statutory initiative), the voting public is entitled to know that the Petition requires such an action to be taken. *See id.* Besides that, potential signers/voters who bother to inform themselves about the existing Chapter 604D will necessarily be confused. After all, the Petition proposes to completely replace the current Chapter 604D, and even change some of the former statute's provisions. While this confusion is not Respondents' fault, that does not change the fact that intervening events have rendered the Petition and its description untenable.

B. Alternatively, this Court Should Dismiss this Case as Moot.

As Respondents concede, *Munsingwear* vacatur is appropriate where "obvious, intervening mooted events" have occurred. (Opp'n at 9.) And, indeed, such an event occurred here. Should this Court decline to summarily reverse this matter, *Munsingwear* vacatur is appropriate to allow the parties to relitigate the effect of the codification of SB 290 as NRS Chapter 604D in the first instance in the district court. *See United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950) (recognizing that *Munsingwear* "clears the path for future relitigation of the issues

between the parties and eliminates a judgment, review of which was prevented through happenstance").²

III. CONCLUSION

This Court should grant this Motion and summarily reverse the district court's order. Alternatively, this Court should grant *Munsingwear* vacatur and allow the parties to relitigate S-03-2024 in light of the now-existing facts.

DATED this 24th day of June, 2024.

PISANELLI BICE PLLC

By: /s/ Todd L. Bice

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² Respondents' odd focus on Appellants' opposition to a motion for summary adjudication in a different appeal (Docket No. 88526) is misplaced. First, Appellants did not oppose Respondents' motion to expedite in Docket No. 88526. Instead, they opposed the request for summary reversal and expressly "d[id] not oppose an expedited briefing schedule that allows a reasonable time for all parties to complete the necessary appellate briefing." *Feldman et al. v. Nevadans for Financial Choice et al.*, No. 88526, at *1 (Respondents Nevadans for Financial Choice & Christina Bauer's Response to Appellants' Motion for Expedited Consideration of Appeal Apr. 25, 2024). And, Respondents (yet again) ignore the factual differences. There, Respondents (as Appellants in their ultimately unsuccessful appeal) sought summary reversal on the district court record for no reason other than the desire for an immediate result. *See id.* Here, however, Appellants Nevadans for Financial Choice and Christina Bauer did not seek summary reversal until the codification of SB 290, as NRS Chapter 604D rendered summary disposition proper. *See Groendyke Transport, Inc. v. Davis*, 406 F.2d 1158, 1161 (5th Cir. 1969) (explaining that summary disposition is proper where "the position of one of the parties is clearly right as a matter of law").

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice, PLLC, and that on this 24th day of June, 2024, I electronically filed and served by electronic mail a true and correct copy of the above and foregoing **REPLY IN SUPPORT OF MOTION FOR SUMMARY REVERSAL OR, IN THE ALTERNATIVE, MUNSINGWEAR VACATUR** to all parties registered for electronic service:

/s/ Kimberly Peets
An employee of Pisanelli Bice PLLC