

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; STACY PRESS, an individual;
PREFERRED CAPITAL FUNDING -
NEVADA, LLC, a Nevada Limited Liability
Company; AND ALLIANCE FOR
RESPONSIBLE CONSUMER LEGAL
FUNDING, an Illinois Nonprofit Corporation
Appellants,

vs.

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

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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

APPEAL

from the First Judicial District Court of the State of Nevada
The Honorable WILLIAM A. MADDOX, Senior Judge
District Court Lead Case No. 24 OC 00018 1B

APPELLANTS' APPENDIX VOLUME III OF V

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DATED this 26th day of August, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2024, I have caused a true and correct copy of the foregoing APPELLANTS' APPENDIX 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/Rachel Lord
an Employee of REISMAN SOROKAC

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**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY**

NEVADANS FOR FINANCIAL CHOICE, a
Nevada Political Action Committee, and
CHRISTINA BAUER, an Individual,

Plaintiffs,

v.

KATE FELDMAN, an individual, STOP
PREDATORY LENDING NV, a Nevada
Nonprofit Corp., and FRANCISCO
AGUILAR, in his official capacity as Nevada
Secretary of State,

Defendants.

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Case No.: 240C000181B

Dept. No.: II

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF CONCERNING STATEWIDE
BALLOT INITIATIVES – S-01-2024 AND
S-03-2024**

(Priority Matter Under NRS 295.061)

**Arbitration Exemption: Declaratory and
Injunctive Relief**

Plaintiffs Nevadans For Financial Choice, PAC and Christina Bauer file this First Amended Complaint for declaratory and injunctive relief against Defendants Kate Feldman, Stop Predatory Lending NV, and Francisco Aguilar, in his official capacity as the Nevada Secretary of State pursuant to NRS 295.009, 30.030 and 33.010. Plaintiffs allege as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to NRS 295.061 as this is a challenge to two statewide ballot initiatives. Furthermore, the Court has jurisdiction to grant declaratory and injunctive relief under NRS 30.030 and 33.010.

2. Venue is proper under NRS 295.061(1) which specifies that challenges to ballot initiatives shall be filed in the First Judicial District Court.

PARTIES

3. Plaintiff Nevadans For Financial Choice is a Nevada Political Action Committee duly registered in the State of Nevada.

4. Plaintiff Christina Bauer is a registered voter and resident of the State of Nevada.

5. Defendant Kate Feldman is, upon information and belief, a resident of the State of Nevada and on January 5, 2024, filed with the Nevada Secretary of State a statewide ballot measure S-01-2024 which she deceptively characterized as "Preventing Predatory Payday and Other Loans Act" (the "First Initiative"). On January 24, 2024, Feldman filed a second initiative, S-03-2024 (the "Second Initiative") which is substantively identical to the First Initiative, except deleting the First Initiative's Sections 17 and 18.

6. Defendant Stop Predatory Lending NV is, upon information and belief, a Nevada nonprofit corporation formed to support both the First Initiative and the Second Initiative.

7. Defendant Francisco Aguilar is the Nevada Secretary of State and is named in his official capacity. As the Secretary, Mr. Aguilar is responsible for the execution and enforcement of Nevada's election laws. His duties include qualifying initiatives for submission to the Nevada Legislature and to disqualify those that are invalid under Nevada law.

COMMON FACTUAL ALLEGATIONS

A. The First Initiative.

8. On January 5, 2024, Defendant Feldman filed the Initiative S-01-2024 with the Nevada Secretary of State. A true and correct copy of the Notice of Intent to Circulate Statewide Initiative associated with S-01-2024 is attached hereto as Exhibit 1.

9. The First Initiative seeks to add a new Chapter 604D to the Nevada Revised Statutes amending a multitude of existing statutory chapters.

10. While the First Initiative purports to be focused upon what it characterizes as "payday loans," in actuality its sweeping breadth covers a wide range of financial transactions. Indeed, the First Initiative's Section 8 lists nearly ten different distinct categories of financial transactions with a final catch-all provision declaring that it also applies to any "loans made by a

1 bank, savings bank, savings and loan association, or credit union organized, chartered, or holding
2 a certificate of authorization to do business under the laws of this State."

3 11 Without ever using the term, what the First Initiative really seeks to impose is a
4 "usury" law – contrary to existing Nevada law – on wholly distinct and different financial
5 transactions. On top of that, it purports to have Nevada opt out of the "Depository Institutions
6 Deregulation and Monetary Control Act of 1980."

7 12. Then, in Section 15, the First Initiative creates an exemption until January 1, 2030,
8 for "entities licensed under the laws of this State to provide earn wage access services, as defined
9 in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023)"

10 13. Of course, none of these discreet subjects is disclosed anywhere in the
11 First Initiative's statutory-mandated description of effect.

12 14. Rather, the very first paragraph of the First Initiative misleads Nevada citizens,
13 declaring:

14 Section 2. *Liberal Construction.* The provisions of this Chapter shall be liberally
15 construed to achieve its purpose, which are combating predatory payday lending
16 and other high cost loans; ensuring that out-of-state lenders cannot flout Nevada
17 law by making payday loans, other loans, or transactions subject to this chapter at
unlawful rates on Nevada residents, and protecting law-abiding lenders from unfair
competition by predatory, out-of-state entities.

18 15. In actuality, this assertion is deceptive. The First Initiative applies to virtually all
19 types of loans and has nothing to do with protecting Nevada lenders from out-of-state entities or
20 competition. This misleads the public by pretending that it is directed at what it characterizes as
21 only certain "predatory payday" loans: - whatever that is supposed to mean – when in fact it is
22 designed to apply to wide swaths and distinct forms of financial transactions throughout the State.

23 16. On top of that, the First Initiative's Section 17 would provide a wholesale change to
24 NRS 21.105, which governs writs of execution and writs of garnishment in the State of Nevada.
25 This distinct aspect of the First Initiative purports to eliminate a number of specific exemptions for
26 these writ proceedings, and then proposes to increase the financial size of a singular exemption by
27 more than ten times the existing level adopted by the Nevada Legislature.

28

1 17. In Section 18, the First Initiative would then amend NRS 21.090 to increase the
2 amount of the statutory exemption for disposable earnings, and then adjust that exemption for
3 inflation.

4 18. The various distinct forms of financial transactions within the reach of the First
5 Initiative, and the specified exemptions to it, are not related to or germane to a single subject matter
6 as NRS 295.009(1)(a) requires.

7 19. Nor are the provisions dealing with changing Nevada's laws governing writs of
8 execution or garnishment related to or germane to the other provisions of the First Initiative. Rather,
9 each is a separate and distinct subject matter under NRS 295.009(1)(a).

10 20. This last point is confirmed by the First Initiative's proposed description of effect
11 under NRS 295.009(1)(b), which confesses the single-subject violation:

12 **DESCRIPTION OF EFFECT**

13 This measure addresses high-interest lending practices by establishing maximum
14 interest rates charged to consumers, and shields more of people's savings and
earnings from garnishment than under current law.

15 Currently, most consumer loans have no interest rate cap. The proposed cap would
16 set a maximum interest rate of 36% annually on the unpaid balance of the amount
financed, and would apply to consumer loans; deferred-deposit transactions
17 (payday loans"); title loans; and other loan types dependent on future earnings and
income.

18 The initiative also prohibits evading the interest rate cap by structuring transactions
19 to mask their nature as loans covered by this measure, or partnering with
out-of-state lenders to violate the rate cap. The initiative voids transactions that
20 violate the cap, and establishes civil penalties.

21 Additionally, the initiative automatically protects \$5,000 of savings in a personal
22 bank account (up from \$400 now), and \$850 of wages in any workweek (up from
\$369), as well as a portion of disposable earnings above that amount, from seizure
for a debt. Those amounts would be indexed to increase periodically with inflation.

23 21. As the first sentence makes clear, the Initiative embraces more than one subject "by
24 establishing maximum interest rates charged to consumers, *and* shields more of people's savings
25 and earnings from garnishment than under current law." (Emphasis added.)

26 22. The Initiative's description is also deficient in that it fails to accurately describe for
27 voters just what the Initiative would actually do if enacted. Tellingly, it omits many of its
28 provisions, including its proposal for opting out of federal law.

B. The Second Initiative.

23. On January 24, 2024, Defendant Feldman filed the Initiative S-03-2024 with the Nevada Secretary of State (the "Second Initiative"). A true and correct copy of the Notice of Intent to Circulate Statewide Initiative associated with S-03-2024 is attached hereto as Exhibit 2.

24. The Second Initiative is substantively identical to the First Initiative, except the First Initiative contains its proposed Section 17 and 18 dealing with writs of garnishment and writs of execution.

25. It appears that the purpose of the Second Initiative is to erroneously lead the Court to believe that the Initiative's sponsors have eliminated the most blatant single-subject violation – Sections 17 and 18 – such that the Court would overlook all of the other defects in the Second Initiative.

26. Yet, the Second Initiative continues to suffer from legal defects, include that it violates Nevada's single-subject requirement, proposing to amend and outright repeal a whole host of different statutory provisions while failing to give proper notice of those changes as Nevada law requires.

27. Indeed, the description of effect for the Second Initiative continues to mislead voters and simply provides as follows:

DESCRIPTION OF EFFECT

This measure addresses high-interest lending practices by establishing maximum interest rates charged to consumers.

Currently, most consumer loans have no interest rate cap. The proposed cap would set a maximum interest rate of 36% annually on the unpaid balance of the amount finances, and would apply to consumer loans; deferred-deposit transactions ("payday loans"); title loans; and other loan types dependent on future earnings and income.

The initiative also prohibits evading the interest rate cap by structuring transactions to mask their nature as loans covered by this measure, or partnering with out-of-state lenders to violate the rate cap. The initiative voids transactions that violate the cap, and establishes civil penalties.

28. The description fails to disclose the actual effect of the Second Initiative and how it repeals a host of other Nevada statutes.

FIRST CAUSE OF ACTION

(NRS 295.009(1)(a) – First Initiative)

29. Plaintiff incorporates the allegations of Paragraph 1 through 28 as though fully set forth herein.

30. Pursuant to NRS 295.009(1)(a), an initiative petition must embrace "but one subject and matters necessarily connected therewith and pertaining thereto." To satisfy this requirement, the parts of the proposed initiative must be "functionally related and germane to each other in a way that provides efficient notice of the general subject of, and the interest likely to be effected by, the proposed initiative or referendum." NRS 295.009(2).

31. The First Initiative violates Nevada's single-subject rule by incorporating more than one subject matter.

32. Accordingly, the First Initiative is invalid and must be stricken, with the Defendants enjoined from taking any further action upon it.

SECOND CAUSE OF ACTION

(NRS 295.009(1)(b) – The First Initiative)

33. Plaintiff incorporates the allegations of Paragraph 1 through 32 as though fully set forth herein.

34. NRS 295.009(1)(b) specifies that an initiative must "set forth, in no more than 200 words, a description of effect of the initiative or referendum if the initiative or referendum is approved by the voters." Nevada law precludes any description that is deceptive or misleading. Nevada law mandates that the description explain the ramifications of the proposed initiative so that voters can make an informed decision.

35. Beyond embracing more than one subject matter, the First Initiative's description is deficient because it is deceptive and misleading, and fails to inform voters of essential information regarding the Initiative's effects. It purports to impose a sweeping "usury" provision into Nevada law without ever so specifying. It furthermore deceptively tells voters that it concerns so-called "payday loans," when in fact the Initiative is much broader and includes a host of various and common financing arrangements.

1 36. The description of the First Initiative also fails to inform voters of the exemptions to
2 federal law and similar effects of the Initiative.

3 37. Accordingly, the First Initiative is invalid and should be stricken, with the
4 Defendants enjoined from taking any further action upon it.

5 **THIRD CAUSE OF ACTION**

6 **(NRS 295.009(1)(a) – Second Initiative)**

7 38. Plaintiff incorporates the allegations in Paragraphs 1 through 37 as though fully set
8 forth herein.

9 39. The Second Initiative violates Nevada's single subject rule by incorporating more
10 than one subject matter.

11 40. Accordingly, the Second Initiative is invalid and must be stricken, with the
12 Defendants enjoined from taking any further action upon it.

13 **FOURTH CAUSE OF ACTION**

14 **(NRS 295.009(1)(b) – Second Initiative)**

15 41. Plaintiff incorporates the allegations in Paragraphs 1 through 40 as though fully set
16 forth herein.

17 42. NRS 295.009(1)(b) specifies that an initiative must "set forth, in no more than
18 200 words, a description of effect of the initiative or referendum if the initiative or referendum is
19 approved by the voters." Nevada law precludes any description that is deceptive or misleading.
20 Nevada law mandates that the description explain the ramifications of the proposed initiative so
21 that voters can make an informed decision.

22 43. Beyond embracing more than one subject matter, the Second Initiative's description
23 is deficient because it is deceptive and misleading, and fails to inform voters of essential
24 information regarding the Initiative's effects. It purports to impose a sweeping "usury" provision
25 into Nevada law without ever so specifying. It furthermore deceptively tells voters that it concerns
26 so-called "payday loans," when in fact the Initiative is much broader and includes a host of various
27 and common financing arrangements.

1 44. The description of the Second Initiative also fails to inform voters of the exemptions
2 to federal law and similar effects of the Initiative, including the repealing of other statutes.

3 45. Accordingly, the Second Initiative is invalid and should be stricken, with Defendants
4 enjoined from taking any further action upon it.

5 **FIFTH CAUSE OF ACTION**

6 **(Article 19, Section 3)**

7 46. Plaintiff incorporates the allegations in Paragraphs 1 through 45 as though fully set
8 forth herein.

9 47. Article 19, Section 3 of the Nevada Constitution mandates that "[e]ach referendum
10 petition and initiative petition shall include *the full text* of the measure proposed."
11 (Emphasis added.) This means that if the initiative seeks to repeal the effect of a statute, it must set
12 out that statute and show how it will be repealed in detail. The full text must be set forth. Similarly,
13 if an initiative proposes to add a statute, it must set forth the full text of what is to be added.

14 48. The Initiative's proponents have failed to comply with Article 19, Section 3 of the
15 Nevada Constitution. Both Initiatives propose to amend a whole host of different existing Nevada
16 statutes. For instance, in Section 8, Defendants purport to identify a host of different types of loan
17 transactions to which the new proposed Chapter 604D would apply, but in doing so then proposes
18 to repeal/modify other provisions of Nevada law but fails to set forth just what those provisions are.

19 49. For instance, in proposed Section 8(1) the Initiatives would override NRS 604A.220
20 without setting forth its actual terms. Similarly, in Section 8(8) both Initiatives would effectively
21 repeal NRS 97.285 as well as "any other provision of law" because it provides that NRS Chapter 97
22 is the "exclusive" provisions governing retail installment transactions and it expressly provides that
23 "the provisions of any other statute do not apply to retail installment transactions governed by this
24 Chapter."

25 50. Similarly, the proposed Section 8(10) would purport to extend the reach of the
26 proposed new Chapter 604D to banks and other institutions, overriding a host of statutory
27 provisions—NRS 662.015, 672.370, 672.460, 672.710, 673.225, 673.3272, 677.730 – without ever
28

1 setting forth those terms so that voters can see the full magnitude of what these Initiatives propose
2 to add and delete from the Nevada Revised Statutes.

3 51. Accordingly, both Initiatives are invalid and should be stricken, with the Defendants
4 enjoined from taking any further action upon them.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for relief as follows:

7 1. A declaration that both Initiatives are invalid under NRS 295.009 by violating the
8 single-subject rule;

9 2. A declaration that both Initiatives are invalid and do not comply with
10 NRS 295.009(1)(b) because the description of effect is deficient;

11 3. A declaration that both Initiatives violate Article 19, Section 3 of the Nevada
12 Constitution;

13 4. An injunction prohibiting the Secretary of State from taking further action on the
14 Initiative;

15 5. An injunction prohibiting Defendants from circulating this defective petition for
16 verification; and

17 6. Such further and additional relief that this Court deems appropriate.

18 **AFFIRMATION**

19 The undersigned does hereby affirm that this document does not contain the social security
20 number of any person.

21 DATED this 14th day of February, 2024.

22 PISANELLI BICE PLLC

23 By: 

24 Todd L. Bice, Esq., #4534
25 Jordan T. Smith, Esq., #12097
26 Daniel R. Brady, Esq., #15508
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

27 *Attorneyx for Plaintiffx*
28

EXHIBIT 1



Pursuant to NRS 295.015, before a petition for initiative or referendum may be presented to registered voters for signatures, the person who intends to circulate the petition must provide the following information:

NAME OF PERSON FILING THE PETITION

Kate Feldman

NAME(S) OF PERSON(S) AUTHORIZED TO WITHDRAW OR AMEND THE PETITION (provide up to three)

1. Kate Feldman

2.

3.

NAME OF THE POLITICAL ACTION COMMITTEE (PAC) ADVOCATING FOR THE PASSAGE OF THE INITIATIVE OR REFERENDUM (if none, leave blank)

Please note, if you are creating a Political Action Committee for the purpose of advocating for the passage of the initiative or referendum, you must complete a separate PAC registration form.

Additionally, a copy of the initiative or referendum, including the description of effect, must be filed with the Secretary of State's office at the time you submit this form.

X

Kate Feldman

Signature of Petition Filer

1/4/2024

Date

Explanation - Matter in *italics* is new; matter between brackets [omitted material] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS

Section 1. The 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:

Section 2. Liberal construction. *The provisions of this chapter shall be liberally construed to achieve its purposes, which are combatting predatory payday lending and other high-cost loans; ensuring that out-of-state lenders cannot flout Nevada law by making payday loans, other loans, or transactions subject to this chapter at unlawful rates to Nevada residents; and protecting law-abiding lenders from unfair competition by predatory, out-of-state entities.*

Section 3. Definitions. *As used in this chapter, the words and terms defined in sections 4 to 6, inclusive, of this chapter have the meanings ascribed to them in those sections.*

Section 4. Annual percentage rate defined. *The term "Annual percentage rate" or APR means an annual rate calculated including all amounts, charges, and payments made directly or indirectly, incident to, ancillary to, or as a condition of a loan or other transaction subject to this chapter, whether voluntary, optional or required, including any amount paid to a broker or credit services organization. The APR shall include, but is not limited to, all interest, fees, charges and other payments as set forth in the regulations issued by the United States Secretary of Defense on July 22, 2015 to implement the Military Lending Act, 10 USC sec. 987, except that credit card fees may be excluded only if the card is network-branded and the fees collectively each year do not exceed 15% of the credit line. The annual percentage rate shall be calculated as specified in such regulations.*

Section 5. Loan defined.

1. For purposes of this chapter, "loan" means and includes:

(a) Money or credit provided to a consumer in exchange for the consumer's agreement to a certain set of terms, including, but not limited to, provisions for direct or indirect repayment, interest, fees, charges or other payments, or other conditions;

(b) Any deferred deposit transaction or payday loan, installment loan, line of credit, retail installment sales contract, and motor vehicle retail installment sales contract, and other closed-end or open-end credit; and

(c) Any sale, assignment, order, or agreement for the payment of unpaid wages, salary, commissions, compensation, or other income, or any portion or amount thereof, whether earned, to be earned, or contingent upon future earnings, that is made in consideration for goods or services, credit, or the payment of money to or for the account of the person earning or receiving, or potentially earning or receiving, the wages, salary, commissions, compensation, or other income.

2. Any transaction that satisfies any definition in this section is a "loan" for purposes of this chapter without regard to the means of collection, without regard to whether the payday lender or other lender has legal recourse against the borrower in the event of non-repayment, and without regard to whether the transaction carries required charges or payments.

Section 6. Network-branded defined. "Network-branded" means branded with and available for use on the Visa, MasterCard, American Express or Discover networks or a similar widely-accepted card network that is accepted upon presentation for purchases of goods and services at multiple, unaffiliated merchants.

Section 7. Application of chapter. This chapter applies to any payday lender or other person that:

1. Markets, offers, brokers, arranges, facilitates, makes or services a loan as defined in Section 5 of this chapter or other transaction as defined in Section 8 of this chapter, including a credit service organization that obtains an extension of credit for a borrower;

2. Is a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business under the laws of this state, another state, or the United States. However, banks, savings banks, savings and loan associations, and credit unions organized, chartered or holding a certificate of authority to do business under the laws of another state or under the laws of the United States are exempt from this chapter only to the extent this chapter is preempted by federal law;

3. Is an agent of a person subject this chapter or of any affiliate, subsidiary or other entity that is related to, that controls, or that is controlled by a person subject to this chapter;

4. *Acquires a whole or partial interest in a loan or transaction subject to this chapter;*

5. *Is deemed to be subject to this chapter under section 11 of this chapter or is engaged in a transaction that is in substance a disguised loan or other transaction subject to this chapter or is a device, subterfuge or pretense to evade this chapter.*

6. *Markets, offers, brokers, arranges, facilitates, makes or services any transaction that is otherwise subject to this chapter and that is offered or made to a person residing in this state, whether the transaction is conducted in person, by telephone, via the Internet, or by any other means.*

Section 8. *Specific transactions subject to this chapter. Notwithstanding any other provision of law, transactions subject to this chapter shall include, but shall not be limited to, the following:*

1. *Deferred deposit loans (also known as payday loans), as defined in NRS 604A.050. A deferred deposit loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*

2. *High-interest loans, as defined in NRS 604A.0703. A high-interest loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*

3. *Title loans, as defined in NRS 604A.105. A title loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*

4. *Refund anticipation loans, as defined in NRS 604B.060.*

5. *Consumer litigation funding transactions, as defined in NRS 604C.100. A consumer litigation funding transaction is subject to this chapter notwithstanding NRS 604C.220 or any other provision of law.*

7. *Installment loans, as regulated by Chapter 675 of the Nevada Revised Statutes;*

8. *Retail installment transactions, as defined in NRS 97.115. A retail installment transaction is subject to this chapter notwithstanding NRS 97.285 or any other provision of law;*

9. *Loans secured by a life insurance or annuity contract, as regulated by NRS 688A.110; and*

10. *Loans made by a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business*

under the laws of this state. This chapter shall apply to loans made by those entities notwithstanding NRS 662.015, NRS 672.370, NRS 672.460, NRS 672.710, NRS 673.225, NRS 673.3272, NRS 677.730 or any other provision of law.

Section 9. Maximum interest rate permitted. *For any loan or other transaction subject to this chapter made or renewed on or after the effective date of this chapter, no payday lender or other person shall market, offer, charge, contract for, collect or receive, directly or indirectly, charges or amounts exceeding a 36% annual percentage rate on the unpaid balance of the amount financed. This section shall apply notwithstanding any other provision of the laws of this state, including but not limited to any provision of NRS 604A.0703, NRS 604A.5029, NRS 604A.5052, or NRS 604A.5057 or any other law that refers to or allows an annual percentage rate that exceeds 36%.*

Section 10. Prohibited acts to evade application of chapter. *For any loan or other transaction subject to this chapter, no payday lender or other person shall engage in any device, subterfuge, or pretense to evade the requirements of this chapter, including, but not limited to:*

- 1. Making a loan or other transaction disguised as a personal property sale and leaseback transaction;*
- 2. Disguising proceeds of a loan or other transaction as a cash rebate for the pretextual sale of goods or services;*
- 3. Disguising a loan or other transaction as the sale of goods, services or things in action or disguising charges for a loan or other transaction in the price of goods, services or things in action;*
- 4. Making, contracting for, offering, assisting, or arranging for a borrower to obtain a loan or other transaction with a higher rate or amount of interest, consideration, charge or other payment received incident to the loan than is permitted by Section 9 of this chapter through any method including mail, telephone, internet or any electronic means, regardless of whether the person has a physical location in the state;*
- 5. Structuring the transaction in a manner to obscure the fact that it is a loan; or*
- 6. Charging, contracting for or receiving interest, fees, charges or other payments in excess of those permitted, regardless whether the payment purports to be voluntary.*

Section 11. Application of chapter to agents and service providers of exempt entities. *If the annual percentage rate of the loan or other transaction exceeds the rate permitted by Section 9*

of this chapter, a person shall be subject to the requirements of this chapter notwithstanding the fact that the person purports to act as an agent or service provider or in another capacity for a person that is exempt from this chapter, if, among other things:

- 1. The person holds, acquires, or maintains, directly or indirectly, the predominant economic interest, risk or reward, in the loan or transaction;*
- 2. The person (a) markets, solicits, brokers, arranges, facilitates or services loans or transactions and (b) holds, or has the right, requirement or first right of refusal to acquire, the loans, transactions, a share of receivables or another direct or indirect interest in the loans or loan program; or*
- 3. The totality of the circumstances indicate that the person is engaging in transactions subject to this chapter and that the transaction is structured to evade the requirements of this chapter. Circumstances that weigh in favor of a person being subject to this chapter include, without limitation, when the person:*
 - (a) indemnifies, insures or protects an exempt entity from costs or risks related to the loan or transaction;*
 - (b) predominantly designs, controls or operates the loan program or transaction;*
 - (c) holds the trademark or intellectual property rights in the brand, underwriting system, or other core aspects of the loan program or transaction; or*
 - (d) purports to act as an agent or service provider or in another capacity for an exempt entity while acting directly as a lender in other states.*

Section 12. *Prohibition against facilitation of payday loans or other transactions in violation of chapter.* *No person shall solicit, broker, or engage in any other activity intended to facilitate or result in, or that in fact facilitates or results in, a loan or transaction that violates this chapter.*

Section 13. *Remedies for payday loans or other transactions made in violation of this chapter.*

- 1. A loan or other transaction made in violation of this chapter shall be void and uncollectible as to any principal, fee, interest, charge or payment.*
- 2. An action for violation of this chapter may be brought in any court of competent jurisdiction.*
- 3. Any person who violates this chapter is liable to the borrower for:*

- (a) Actual and consequential damages;
- (b) Restitution of any amounts paid;
- (c) Treble the amount of any excess fee, interest, charge, or payment;
- (d) Statutory damages, at an amount that the court considers just, of at least \$250 and no more than \$1,000 per violation;
- (e) Injunctive or declaratory relief;
- (f) Reasonable attorney's fees and costs; and
- (g) Any other legal or equitable relief that the court deems appropriate in addition to any other remedies provided at law.

4. The remedies provided for in this section are cumulative to any other remedies that apply to a loan or other transaction made in violation of other laws of this State.

Section 14. Declaration of Intent to opt out of DIDMCA. In accordance with section 525 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, the voters of the State of Nevada declare that the State of Nevada does not want the amendments to the "Federal Deposit Insurance Act", 12 U.S.C. sec. 1811 et seq.; the federal "National Housing Act", 12 U.S.C. sec. 1701 et seq.; and the "Federal Credit Union Act", 12 U.S.C. sec. 1757, made by sections 521 to 523 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, prescribing interest rates and preempting state interest rates to apply to loans as defined in Section 5 of this chapter or specific transactions as defined in Section 8 of this chapter. The rates established in this chapter shall apply to payday loans and other loans as defined in Section 5 of this chapter and specific transactions as defined in Section 8 of this chapter.

Section 15. Application of chapter to earned wage access services. Prior to January 1, 2030, section 9 of this chapter shall not apply to entities licensed under the laws of this State to provide earned wage access services, as defined in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400. Beginning on January 1, 2030, section 9 shall apply to any provider of earned wage access services, regardless of whether the provider is licensed under the laws of this State, including any provider of transactions that satisfy the definition of earned wage access services currently set forth in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400.

Section 16. NRS 99.050 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 2, parties may agree for the payment of any rate of interest on money due or to become due on any contract, for the compounding of interest if they choose, and for any other charges or fees, *provided, however, that parties cannot agree to any arrangement that violates the requirements of Chapter 604D of the Nevada Revised Statutes*. The parties shall specify in writing the rate upon which they agree, that interest is to be compounded if so agreed, and any other charges or fees to which they have agreed.

2. A creditor shall not charge an annual percentage rate that is greater than the lesser of 36 percent or the maximum annual percentage rate authorized under any federal law or regulation with respect to the consumer credit extended to a covered service member or a dependent of a covered service member. Any contract or agreement in violation of this subsection is void and unenforceable.

3. As used in this section:

(a) “Annual percentage rate” has the meaning ascribed to it in the federal Truth in Lending Act, as amended, 15 U.S.C. §§ 1601 et seq., and the federal regulations adopted pursuant thereto.

(b) “Consumer credit”:

(1) Except as otherwise provided in subparagraph (2), means credit offered or extended to a covered service member or dependent of a covered service member primarily for personal, family or household purposes, and that is:

(I) Subject to a finance charge; or

(II) Payable by a written agreement in more than four installments.

(2) Does not include:

(I) A residential mortgage, which is any credit transaction secured by an interest in a dwelling, including a transaction to finance the purchase or initial construction of the dwelling, any refinance transaction, home equity loan or line of credit or reverse mortgage;

(II) Any credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased;

(III) Any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased;

(IV) Any credit transaction that is an exempt transaction for the purposes of 12 C.F.R. Part 1026, commonly known as Regulation Z, other than a transaction exempt under 12 C.F.R. § 1026.29, or otherwise is not subject to disclosure requirements under 12 C.F.R. Part 1026, commonly known as Regulation Z; and

(V) Any credit transaction or account for credit for which a creditor determines that a natural person is not a covered borrower by using a method and by complying with the recordkeeping requirement set forth in 32 C.F.R. § 232.5(b).

(e) "Covered service member":

(1) Except as otherwise provided in subparagraph (2), means a member of the armed forces who is serving on:

(I) Active duty pursuant to title 10, title 14 or title 32 of the United States Code, under a call or order that does not specify a period of 30 days or fewer; or

(II) Active Guard and Reserve duty, as that term is defined in 10 U.S.C. § 101(d)(6).

(2) Does not include a consumer who was a covered service member pursuant to subparagraph (1) at the time he or she became obligated on a consumer credit transaction or established an account for consumer credit but is no longer a covered service member pursuant to subparagraph (1) or a dependent of a person who is a covered service member pursuant to subparagraph (1).

(d) "Credit" means the right granted to a natural person by a person engaged in the business of extending consumer credit, or an assignee of such a person with respect to any consumer credit extended, to defer payment or to incur debt and defer its payment.

(e) "Dependent" with respect to a covered service member means:

(1) The spouse;

(2) A child who:

(I) Has not attained the age of 21;

(II) Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, as defined in 10 U.S.C. § 1072(3), and is, or was at the time of the covered service

member's or former covered service member's death, in fact dependent on the covered service member or former covered service member for over one-half of the child's support; or

(III) Is incapable of self-support because of a mental or physical incapacity that occurs while a dependent of a covered service member or former covered service member under sub-subparagraph (I) or (II) and is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on the member or former member for over one-half of the child's support;

(3) A parent or parent-in-law who is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on him or her for over one-half of his or her support and residing in his or her household;

(4) An unmarried person who:

(I) Is placed in the legal custody of the covered service member or former covered service member as a result of an order of a court of competent jurisdiction in the United States, or possession of the United States, for a period of at least 12 consecutive months;

(II) Has not attained the age of 21, has not attained the age of 23 and is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, as defined in 10 U.S.C. § 1072(3), or is incapable of self-support because of a mental or physical incapacity that occurred while the person was considered a dependent of the covered service member or former covered service member pursuant to this paragraph;

(III) Is dependent on the covered service member or former covered service member for over one-half of the person's support;

(IV) Resides with the covered service member or former covered service member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the administering Secretary, as defined in 10 U.S.C. § 1072(3), may by regulation prescribe; and

(V) is not a dependent of a covered service member or a former covered service member pursuant to subparagraph (1), (2) or (3).

(f) "Dwelling" means a residential structure that contains one to four units, whether or not the structure is attached to real property. The term includes, without limitation, an individual condominium unit, cooperative unit, mobile home and manufactured home.

Section 17. NRS 21.105 is hereby amended to read as follows:

~~[1. If a writ of execution or garnishment is levied on the personal bank account of the judgment debtor and money has been deposited into the account electronically within the immediately preceding 45 days from the date on which the writ was served which is reasonably identifiable as exempt from execution, notwithstanding any other deposits of money into the account, \$2,000 or the entire amount in the account, whichever is less, is not subject to execution and must remain accessible to the judgment debtor. For the purposes of this section, money is reasonably identifiable as exempt from execution if the money is deposited in the bank account by the United States Department of the Treasury, including, without limitation, money deposited as:~~

~~(a) Benefits provided pursuant to the Social Security Act which are exempt from execution pursuant to 42 U.S.C. §§ 407 and 1383, including, without limitation, retirement and survivors' benefits, supplemental security income benefits, disability insurance benefits and child support payments that are processed pursuant to Part D of Title IV of the Social Security Act;~~

~~(b) Veterans' benefits which are exempt from execution pursuant to 38 U.S.C. § 5301;~~

~~(c) Annuities payable to retired railroad employees which are exempt from execution pursuant to 45 U.S.C. § 231m;~~

~~(d) Benefits provided for retirement or disability of federal employees which are exempt from execution pursuant to 5 U.S.C. §§ 8346 and 8470;~~

~~(e) Annuities payable to retired members of the Armed Forces of the United States and to any surviving spouse or children of such members which are exempt from execution pursuant to 10 U.S.C. §§ 1440 and 1450;~~

~~(f) Payments and allowances to members of the Armed Forces of the United States which are exempt from execution pursuant to 37 U.S.C. § 701;~~

~~(g) Federal student loan payments which are exempt from execution pursuant to 20 U.S.C. § 1095a;~~

~~(h) Wages due or accruing to merchant seamen which are exempt from execution pursuant to 46 U.S.C. § 11109;~~

~~(i) Compensation or benefits due or payable to longshore and harbor workers which are exempt from execution pursuant to 33 U.S.C. § 916;~~

~~(j) Annuities and benefits for retirement and disability of members of the foreign service which are exempt from execution pursuant to 22 U.S.C. § 4060;~~

~~(k) Compensation for injury, death or detention of employees of contractors with the United States outside the United States which is exempt from execution pursuant to 42 U.S.C. § 4717;~~

~~(l) Assistance for a disaster from the Federal Emergency Management Agency which is exempt from execution pursuant to 44 C.F.R. § 206.110;~~

~~(m) Black lung benefits paid to a miner or a miner's surviving spouse or children pursuant to 30 U.S.C. § 922 or 931 which are exempt from execution; and~~

~~(n) Benefits provided pursuant to any other federal law.]~~

1[2]. If a writ of execution or garnishment is levied on the personal bank account of the judgment debtor [and the provisions of subsection 1 do not apply], \$5,000 [400] or the entire amount in the account, whichever is less, is not subject to execution and must remain accessible to the judgment debtor, unless the writ of execution or garnishment is for the recovery of money owed for the support of any person.

2[3]. If a judgment debtor has more than one personal bank account with the bank to which a writ is issued, the amount that is not subject to execution must not in the aggregate exceed the amount specified in subsection 1 [or 2 as applicable].

3[4]. A judgment debtor may apply to a court to claim an exemption for any amount subject to a writ levied on a personal bank account which exceeds the amount that is not subject to execution pursuant to subsection 1 [or 2].

4[5]. If money in the personal account of the judgment debtor which exceeds the amount that is not subject to execution pursuant to subsection [1 or 2] includes exempt and nonexempt money, the judgment debtor may claim an exemption for the exempt money in the manner set forth in NRS 21.112. To determine whether such money in the account is exempt, the judgment creditor must use the method of accounting which applies the standard that the first money deposited in the account is the first money withdrawn from the account. The court may require a judgment debtor to provide statements from the bank which include all deposits into and withdrawals from the account for the immediately preceding 90 days.

5[6]. A financial institution which makes a reasonable effort to determine whether money in the account of a judgment debtor is subject to execution for the purposes of this section is immune from civil liability for any act or omission with respect to that determination. ~~[including, without limitation, when the financial institution makes an incorrect determination after applying commercially reasonable methods for determining whether money in an account is exempt because the source of the money was not clearly identifiable or because the financial institution inadvertently misidentified the source of the money.]~~ If a court determines that a financial institution failed to identify that money in an account was not subject to execution pursuant to this section, the financial institution must adjust its actions with respect to a writ of execution as soon as possible but may not be held liable for damages.

6[7]. Nothing in this section requires a financial institution to revise its determination about whether money is exempt, except by an order of a court.

Section 18. NRS 21.090 is hereby amended to read as follows:

1. The following property is exempt from execution, except as otherwise specifically provided in this section or required by federal law:

- (a) Private libraries, works of art, musical instruments and jewelry not to exceed \$5,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, to be selected by the judgment debtor, and all family pictures and keepsakes.
- (b) Necessary household goods, furnishings, electronics, wearing apparel, other personal effects and yard equipment, not to exceed \$12,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, to be selected by the judgment debtor.
- (c) Farm trucks, farm stock, farm tools, farm equipment, supplies and seed not to exceed \$4,500 in value, belonging to the judgment debtor to be selected by the judgment debtor.
- (d) Professional libraries, equipment, supplies, and the tools, inventory, instruments and materials used to carry on the trade or business of the judgment debtor for the support of the judgment debtor and his or her family not to exceed \$10,000 in value.
- (e) The cabin or dwelling of a miner or prospector, the miner's or prospector's cars, implements and appliances necessary for carrying on any mining operations and the mining claim actually worked by the miner or prospector, not exceeding \$4,500 in total value.

(f) Except as otherwise provided in paragraph (p), one vehicle if the judgment debtor's equity does not exceed \$15,000 or the creditor is paid an amount equal to any excess above that equity.

(g) For any workweek, *\$850 of disposable earnings. If the debtor's weekly disposable earnings exceed \$850, 90% of disposable earnings in excess of \$850 shall be exempt from garnishment unless the weekly disposable earnings of the debtor exceed \$1,200, in which case 85% of the disposable earnings in excess of \$850 shall be exempt from garnishment. The amount not subject to garnishment is exempt.*^{[82} percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued was \$770 or less, 75 percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued exceeded \$770, or 50 times the minimum hourly wage prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 701 et seq., and in effect at the time the earnings are payable, whichever is greater.] Except as otherwise provided in paragraphs (o), (s) and (t), the exemption provided in this paragraph does not apply in the case of any order of a court of competent jurisdiction for the support of any person, any order of a court of bankruptcy or of any debt due for any state or federal tax. As used in this paragraph:

(1) "Disposable earnings" means that part of the earnings of a judgment debtor remaining after the deduction from those earnings of any amounts required by law to be withheld.

(2) "Earnings" means compensation paid or payable for personal services performed by a judgment debtor in the regular course of business, including, without limitation, compensation designated as income, wages, tips, a salary, a commission or a bonus. The term includes compensation received by a judgment debtor that is in the possession of the judgment debtor, compensation held in accounts maintained in a bank or any other financial institution or, in the case of a receivable, compensation that is due the judgment debtor. *Compensation paid or payable for personal services is earnings regardless of whether the judgment debtor is classified as an independent contractor or an employee.*

(h) All fire engines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements and apparatus thereunto appertaining, and all

furniture and uniforms of any fire company or department organized under the laws of this State,

(i) All arms, uniforms and accouterments required by law to be kept by any person, and also one gun, to be selected by the debtor.

(j) All courthouses, jails, public offices and buildings, lots, grounds and personal property, the fixtures, furniture, books, papers and appurtenances belonging and pertaining to the courthouse, jail and public offices belonging to any county of this State, all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by the town or city to health, ornament or public use, or for the use of any fire or military company organized under the laws of this State and all lots, buildings and other school property owned by a school district and devoted to public school purposes.

(k) All money, benefits, privileges or immunities accruing or in any manner growing out of any life insurance.

(l) The homestead as provided for by law, including:

(1) Subject to the provisions of NRS 115.055, the sum of \$605,000 that is paid to the defendant in execution pursuant to subsection 2 of NRS 115.050 or to a spouse pursuant to subsection 3 of NRS 115.050; and

(2) A homestead for which allodial title has been established and not relinquished and for which a waiver executed pursuant to NRS 115.010 is not applicable.

(m) The dwelling of the judgment debtor occupied as a home for himself or herself and family, where the amount of equity held by the judgment debtor in the home does not exceed \$605,000 in value and the dwelling is situated upon lands not owned by the judgment debtor.

(n) All money reasonably deposited with a landlord by the judgment debtor to secure an agreement to rent or lease a dwelling that is used by the judgment debtor as his or her primary residence, except that such money is not exempt with respect to a landlord or the landlord's successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

- (o) All property in this State of the judgment debtor where the judgment is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan.
- (p) Any vehicle owned by the judgment debtor for use by the judgment debtor or the judgment debtor's dependent that is equipped or modified to provide mobility for a person with a permanent disability.
- (q) Any prosthesis or equipment prescribed by a physician or dentist for the judgment debtor or a dependent of the debtor.
- (r) Money, not to exceed \$1,000,000 in present value, held in:
 - (1) An individual retirement arrangement which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A, including, without limitation, an inherited individual retirement arrangement;
 - (2) A written simplified employee pension plan which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408, including, without limitation, an inherited simplified employee pension plan;
 - (3) A cash or deferred arrangement plan which is qualified and maintained pursuant to the Internal Revenue Code, including, without limitation, an inherited cash or deferred arrangement plan;
 - (4) A trust forming part of a stock bonus, pension or profit-sharing plan which is qualified and maintained pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and
 - (5) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.
- (s) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.
- (t) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former

spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

(ii) Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

(v) Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(w) Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(x) Payments received as restitution for a criminal act.

(y) Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

(z) Any personal property not otherwise exempt from execution pursuant to this subsection belonging to the judgment debtor, including, without limitation, the judgment debtor's equity in any property, money, stocks, bonds or other funds on deposit with a financial institution, not to exceed \$10,000 in total value, to be selected by the judgment debtor.

(aa) Any tax refund received by the judgment debtor that is derived from the earned income credit described in section 32 of the Internal Revenue Code, 26 U.S.C. § 32, or a similar credit provided pursuant to a state law.

(bb) Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

(cc) Regardless of whether a trust contains a spendthrift provision:

(1) A distribution interest in the trust as defined in NRS 163.4155 that is a contingent interest, if the contingency has not been satisfied or removed;

- (2) A distribution interest in the trust as defined in NRS 163.4155 that is a discretionary interest as described in NRS 163.4185, if the interest has not been distributed;
 - (3) A power of appointment in the trust as defined in NRS 163.4157 regardless of whether the power has been exercised;
 - (4) A power listed in NRS 163.5553 that is held by a trust protector as defined in NRS 163.5547 or any other person regardless of whether the power has been exercised; and
 - (5) A reserved power in the trust as defined in NRS 163.4165 regardless of whether the power has been exercised.
- (dd) If a trust contains a spendthrift provision:
- (1) A distribution interest in the trust as defined in NRS 163.4155 that is a mandatory interest as described in NRS 163.4185, if the interest has not been distributed; and
 - (2) Notwithstanding a beneficiary's right to enforce a support interest, a distribution interest in the trust as defined in NRS 163.4155 that is a support interest as described in NRS 163.4185, if the interest has not been distributed.
- (ee) Proceeds received from a private disability insurance plan.
- (ff) Money in a trust fund for funeral or burial services pursuant to NRS 689.700.
- (gg) Compensation that was payable or paid pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS as provided in NRS 616C.205.
- (hh) Unemployment compensation benefits received pursuant to NRS 612.710.
- (ii) Benefits or refunds payable or paid from the Public Employees' Retirement System pursuant to NRS 286.670.
- (jj) Money paid or rights existing for vocational rehabilitation pursuant to NRS 615.270.
- (kk) Public assistance provided through the Department of Health and Human Services pursuant to NRS 422.291 and 422A.325.
- (ll) Child welfare assistance provided pursuant to NRS 432.036.
2. Except as otherwise provided in NRS 115.010, no article or species of property mentioned in this section is exempt from execution issued upon a judgment to recover for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon.

3. Any exemptions specified in subsection (d) of section 522 of the Bankruptcy Reform Act of 1978, 11 U.S.C. §§ 101 et seq., do not apply to property owned by a resident of this State unless conferred also by subsection 1, as limited by subsection 2.

4. The exemptions set forth in this section and NRS 21.105 shall be automatically adjusted to reflect changes by the percentage change, if any, from January 1st to December 31st of the preceding year in the Consumer Price Index for All Urban Consumers, Annual City Average, for the Western Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, beginning the April 1 following enactment and every 3 years thereafter. The Nevada Department of Business & Industry shall publish the 1-year adjustment for an effective date of April 1st for the following year. Adjustments made pursuant to this paragraph must be rounded up to the next \$10.

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DESCRIPTION OF EFFECT

This measure addresses high-interest lending practices by establishing maximum interest rates charged to consumers, and shields more of people's savings and earnings from garnishment than under current law.

Currently, most consumer loans have no interest rate cap. The proposed cap would set a maximum interest rate of 36% annually on the unpaid balance of the amount financed, and would apply to consumer loans; deferred-deposit transactions ("payday loans"); title loans; and other loan types dependent on future earnings and income.

The initiative also prohibits evading the interest rate cap by structuring transactions to mask their nature as loans covered by this measure, or partnering with out-of-state lenders to violate the rate cap. The initiative voids transactions that violate the cap, and establishes civil penalties.

Additionally, the initiative automatically protects \$5,000 of savings in a personal bank account (up from \$400 now), and \$850 of wages in any workweek (up from \$369), as well as a portion of disposable earnings above that amount, from seizure for a debt. Those amounts would be indexed to increase periodically with inflation.

County of _____ (Only registered voters of this county may sign below)
 Petition District: _____ (Only registered voters of this petition district may sign below)

		Office Use	
1	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY	COUNTY
2	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY	COUNTY
3	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
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	YOUR SIGNATURE - DATE / /	CITY	COUNTY
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		Office Use	
9	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY	COUNTY
10	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE - DATE / /	CITY	COUNTY
11	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
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DESCRIPTION OF EFFECT

This measure addresses high-interest lending practices by establishing maximum interest rates charged to consumers, and shields more of people's savings and earnings from garnishment than under current law.

Currently, most consumer loans have no interest rate cap. The proposed cap would set a maximum interest rate of 36% annually on the unpaid balance of the amount financed, and would apply to consumer loans; deferred-deposit transactions ("payday loans"); title loans; and other loan types dependent on future earnings and income.

The initiative also prohibits evading the interest rate cap by structuring transactions to mask their nature as loans covered by this measure, or partnering with out-of-state lenders to violate the rate cap. The initiative voids transactions that violate the cap, and establishes civil penalties.

Additionally, the initiative automatically protects \$5,000 of savings in a personal bank account (up from \$400 now), and \$850 of wages in any workweek (up from \$369), as well as a portion of disposable earnings above that amount, from seizure for a debt. Those amounts would be indexed to increase periodically with inflation.

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AFFIDAVIT OF CIRCULATOR

(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)
)
COUNTY OF _____)

I, _____, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at _____ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that the number of signatures affixed thereon is _____; and (6) that each person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

Signature of Circulator

Subscribed and sworn to or affirmed before me this

_____ day of _____, _____, by _____.

Notary Public or person authorized to administer oath

EXHIBIT 2

State of Nevada
Secretary of State
Francisco V. Aguilar



Notice of Intent
Statewide Initiative or
Referendum Petition
NRS 295.009 and 295.015

Pursuant to NRS 295.015, before a petition for initiative or referendum may be presented to registered voters for signatures, the person who intends to circulate the petition must provide the following information:

NAME OF PERSON FILING THE PETITION

Kate Feldman

NAME(S) OF PERSON(S) AUTHORIZED TO WITHDRAW OR AMEND THE PETITION (provide up to three)

1. Kate Feldman

2.

3.

NAME OF THE POLITICAL ACTION COMMITTEE (PAC) ADVOCATING FOR THE PASSAGE OF THE INITIATIVE OR REFERENDUM (if none, leave blank)

Please note, if you are creating a Political Action Committee for the purpose of advocating for the passage of the initiative or referendum, you must complete a separate PAC registration form.

Additionally, a copy of the initiative or referendum, including the description of effect, must be filed with the Secretary of State's office at the time you submit this form.

X

Kate Feldman

Signature of Petition Filer

1-24-2024

Date

Explanation - Matter in *italics* is new; matter between brackets [omitted material] is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS

Section 1. The 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:

Section 2. *Liberal construction.* *The provisions of this chapter shall be liberally construed to achieve its purposes, which are combatting predatory payday lending and other high-cost loans; ensuring that out-of-state lenders cannot flout Nevada law by making payday loans, other loans, or transactions subject to this chapter at unlawful rates to Nevada residents; and protecting law-abiding lenders from unfair competition by predatory, out-of-state entities.*

Section 3. *Definitions.* *As used in this chapter, the words and terms defined in sections 4 to 6, inclusive, of this chapter have the meanings ascribed to them in those sections.*

Section 4. *Annual percentage rate defined.* *The term “Annual percentage rate” or APR means an annual rate calculated including all amounts, charges, and payments made directly or indirectly, incident to, ancillary to, or as a condition of a loan or other transaction subject to this chapter, whether voluntary, optional or required, including any amount paid to a broker or credit services organization. The APR shall include, but is not limited to, all interest, fees, charges and other payments as set forth in the regulations issued by the United States Secretary of Defense on July 22, 2015 to implement the Military Lending Act, 10 USC sec. 987, except that credit card fees may be excluded only if the card is network-branded and the fees collectively each year do not exceed 15% of the credit line. The annual percentage rate shall be calculated as specified in such regulations.*

Section 5. *Loan defined.*

1. For purposes of this chapter, “loan” means and includes:

(a) Money or credit provided to a consumer in exchange for the consumer’s agreement to a certain set of terms, including, but not limited to, provisions for direct or indirect repayment, interest, fees, charges or other payments, or other conditions;

(b) Any deferred deposit transaction or payday loan, installment loan, line of credit, retail installment sales contract, and motor vehicle retail installment sales contract, and other closed-end or open-end credit; and

(c) Any sale, assignment, order, or agreement for the payment of unpaid wages, salary, commissions, compensation, or other income, or any portion or amount thereof, whether earned, to be earned, or contingent upon future earnings, that is made in consideration for goods or services, credit, or the payment of money to or for the account of the person earning or receiving, or potentially earning or receiving, the wages, salary, commissions, compensation, or other income.

2. Any transaction that satisfies any definition in this section is a “loan” for purposes of this chapter without regard to the means of collection, without regard to whether the payday lender or other lender has legal recourse against the borrower in the event of non-repayment, and without regard to whether the transaction carries required charges or payments.

Section 6. Network-branded defined. *“Network-branded” means branded with and available for use on the Visa, MasterCard, American Express or Discover networks or a similar widely-accepted card network that is accepted upon presentation for purchases of goods and services at multiple, unaffiliated merchants.*

Section 7. Application of chapter. *This chapter applies to any payday lender or other person that:*

1. Markets, offers, brokers, arranges, facilitates, makes or services a loan as defined in Section 5 of this chapter or other transaction as defined in Section 8 of this chapter, including a credit service organization that obtains an extension of credit for a borrower;

2. Is a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business under the laws of this state, another state, or the United States. However, banks, savings banks, savings and loan associations, and credit unions organized, chartered or holding a certificate of authority to do business under the laws of another state or under the laws of the United States are exempt from this chapter only to the extent this chapter is preempted by federal law;

3. Is an agent of a person subject this chapter or of any affiliate, subsidiary or other entity that is related to, that controls, or that is controlled by a person subject to this chapter;

4. Acquires a whole or partial interest in a loan or transaction subject to this chapter;

5. Is deemed to be subject to this chapter under section 11 of this chapter or is engaged in a transaction that is in substance a disguised loan or other transaction subject to this chapter or is a device, subterfuge or pretense to evade this chapter.

6. Markets, offers, brokers, arranges, facilitates, makes or services any transaction that is otherwise subject to this chapter and that is offered or made to a person residing in this state, whether the transaction is conducted in person, by telephone, via the Internet, or by any other means.

Section 8. Specific transactions subject to this chapter. Notwithstanding any other provision of law, transactions subject to this chapter shall include, but shall not be limited to, the following:

1. *Deferred deposit loans (also known as payday loans), as defined in NRS 604A.050. A deferred deposit loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*

2. *High-Interest loans, as defined in NRS 604A.0703. A high-interest loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*

3. *Title loans, as defined in NRS 604A.105. A title loan is subject to this chapter notwithstanding NRS 604A.220 or any other provision of law.*

4. *Refund anticipation loans, as defined in NRS 604B.060.*

5. *Consumer litigation funding transactions, as defined in NRS 604C.100. A consumer litigation funding transaction is subject to this chapter notwithstanding NRS 604C.220 or any other provision of law.*

7. *Installment loans, as regulated by Chapter 675 of the Nevada Revised Statutes;*

8. *Retail installment transactions, as defined in NRS 97.115. A retail installment transaction is subject to this chapter notwithstanding NRS 97.285 or any other provision of law;*

9. *Loans secured by a life insurance or annuity contract, as regulated by NRS 688A.110; and*

10. *Loans made by a bank, savings bank, savings and loan association, or credit union organized, chartered or holding a certificate of authority to do business under the laws of this state. This chapter shall apply to loans made by those entities notwithstanding NRS 662.015, NRS 672.370, NRS 672.460, NRS*

672.710, NRS 673.225, NRS 673.3272, NRS 677.730 or any other provision of law.

Section 9. Maximum interest rate permitted. For any loan or other transaction subject to this chapter made or renewed on or after the effective date of this chapter, no payday lender or other person shall market, offer, charge, contract for, collect or receive, directly or indirectly, charges or amounts exceeding a 36% annual percentage rate on the unpaid balance of the amount financed. This section shall apply notwithstanding any other provision of the laws of this state, including but not limited to any provision of NRS 604A.0703, NRS 604A.5029, NRS 604A.5052, or NRS 604A.5057 or any other law that refers to or allows an annual percentage rate that exceeds 36%.

Section 10. Prohibited acts to evade application of chapter. For any loan or other transaction subject to this chapter, no payday lender or other person shall engage in any device, subterfuge, or pretense to evade the requirements of this chapter, including, but not limited to:

1. Making a loan or other transaction disguised as a personal property sale and leaseback transaction;
2. Disguising proceeds of a loan or other transaction as a cash rebate for the pretextual sale of goods or services;
3. Disguising a loan or other transaction as the sale of goods, services or things in action or disguising charges for a loan or other transaction in the price of goods, services or things in action;
4. Making, contracting for, offering, assisting, or arranging for a borrower to obtain a loan or other transaction with a higher rate or amount of interest, consideration, charge or other payment received incident to the loan than is permitted by Section 9 of this chapter through any method including mail, telephone, internet or any electronic means, regardless of whether the person has a physical location in the state;
5. Structuring the transaction in a manner to obscure the fact that it is a loan; or
6. Charging, contracting for or receiving interest, fees, charges or other payments in excess of those permitted, regardless whether the payment purports to be voluntary.

Section 11. Application of chapter to agents and service providers of exempt entities. If the annual percentage rate of the loan or other transaction exceeds the rate permitted by Section 9 of this chapter, a person shall be subject to the requirements of this chapter notwithstanding

the fact that the person purports to act as an agent or service provider or in another capacity for a person that is exempt from this chapter, if, among other things:

- 1. The person holds, acquires, or maintains, directly or indirectly, the predominant economic interest, risk or reward, in the loan or transaction;*
- 2. The person (a) markets, solicits, brokers, arranges, facilitates or services loans or transactions and (b) holds, or has the right, requirement or first right of refusal to acquire, the loans, transactions, a share of receivables or another direct or indirect interest in the loans or loan program; or*
- 3. The totality of the circumstances indicate that the person is engaging in transactions subject to this chapter and that the transaction is structured to evade the requirements of this chapter. Circumstances that weigh in favor of a person being subject to this chapter include, without limitation, when the person:*
 - (a) indemnifies, insures or protects an exempt entity from costs or risks related to the loan or transaction;*
 - (b) predominantly designs, controls or operates the loan program or transaction;*
 - (c) holds the trademark or intellectual property rights in the brand, underwriting system, or other core aspects of the loan program or transaction; or*
 - (d) purports to act as an agent or service provider or in another capacity for an exempt entity while acting directly as a lender in other states.*

Section 12. *Prohibition against facilitation of payday loans or other transactions in violation of chapter.* *No person shall solicit, broker, or engage in any other activity intended to facilitate or result in, or that in fact facilitates or results in, a loan or transaction that violates this chapter.*

Section 13. *Remedies for payday loans or other transactions made in violation of this chapter.*

- 1. A loan or other transaction made in violation of this chapter shall be void and uncollectible as to any principal, fee, interest, charge or payment.*
- 2. An action for violation of this chapter may be brought in any court of competent jurisdiction.*
- 3. Any person who violates this chapter is liable to the borrower for:*
 - (a) Actual and consequential damages;*

- (b) Restitution of any amounts paid;*
- (c) Treble the amount of any excess fee, interest, charge, or payment;*
- (d) Statutory damages, at an amount that the court considers just, of at least \$250 and no more than \$1,000 per violation;*
- (e) Injunctive or declaratory relief;*
- (f) Reasonable attorney's fees and costs; and*
- (g) Any other legal or equitable relief that the court deems appropriate in addition to any other remedies provided at law.*

4. The remedies provided for in this section are cumulative to any other remedies that apply to a loan or other transaction made in violation of other laws of this State.

Section 14. *Declaration of intent to opt out of DIDMCA. In accordance with section 525 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, the voters of the State of Nevada declare that the State of Nevada does not want the amendments to the "Federal Deposit Insurance Act", 12 U.S.C. sec. 1811 et seq.; the federal "National Housing Act", 12 U.S.C. sec. 1701 et seq.; and the "Federal Credit Union Act", 12 U.S.C. sec. 1757, made by sections 521 to 523 of the federal "Depository Institutions Deregulation and Monetary Control Act of 1980", Pub.L. 96-221, prescribing interest rates and preempting state interest rates to apply to loans as defined in Section 5 of this chapter or specific transactions as defined in Section 8 of this chapter. The rates established in this chapter shall apply to payday loans and other loans as defined in Section 5 of this chapter and specific transactions as defined in Section 8 of this chapter.*

Section 15. *Application of chapter to earned wage access services. Prior to January 1, 2030, section 9 of this chapter shall not apply to entities licensed under the laws of this State to provide earned wage access services, as defined in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400. Beginning on January 1, 2030, section 9 shall apply to any provider of earned wage access services, regardless of whether the provider is licensed under the laws of this State, including any provider of transactions that satisfy the definition of earned wage access services currently set forth in Senate Bill No. 290 of the 82nd Regular Session of the Nevada Legislature (2023), 2023 Nev. Stat., ch. 400.*

Section 16. NRS 99.050 is hereby amended to read as follows:

- 1. Except as otherwise provided in subsection 2, parties may agree for the payment of any rate of interest on money due or to become due on any contract, for the compounding

of interest if they choose, and for any other charges or fees, *provided, however, that parties cannot agree to any arrangement that violates the requirements of Chapter 604D of the Nevada Revised Statutes*. The parties shall specify in writing the rate upon which they agree, that interest is to be compounded if so agreed, and any other charges or fees to which they have agreed.

2. A creditor shall not charge an annual percentage rate that is greater than the lesser of 36 percent or the maximum annual percentage rate authorized under any federal law or regulation with respect to the consumer credit extended to a covered service member or a dependent of a covered service member. Any contract or agreement in violation of this subsection is void and unenforceable.

3. As used in this section:

(a) "Annual percentage rate" has the meaning ascribed to it in the federal Truth in Lending Act, as amended, 15 U.S.C. §§ 1601 et seq., and the federal regulations adopted pursuant thereto.

(b) "Consumer credit":

(1) Except as otherwise provided in subparagraph (2), means credit offered or extended to a covered service member or dependent of a covered service member primarily for personal, family or household purposes, and that is:

(I) Subject to a finance charge; or

(II) Payable by a written agreement in more than four installments.

(2) Does not include:

(I) A residential mortgage, which is any credit transaction secured by an interest in a dwelling, including a transaction to finance the purchase or initial construction of the dwelling, any refinance transaction, home equity loan or line of credit or reverse mortgage;

(II) Any credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased;

(III) Any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased;

(IV) Any credit transaction that is an exempt transaction for the purposes of 12 C.F.R. Part 1026, commonly known as Regulation Z, other than a transaction exempt under 12 C.F.R. § 1026.29, or otherwise is not subject to disclosure requirements under 12 C.F.R. Part 1026, commonly known as Regulation Z; and

(V) Any credit transaction or account for credit for which a creditor determines that a natural person is not a covered borrower by using a method and by complying with the recordkeeping requirement set forth in 32 C.F.R. § 232.5(b).

(c) “Covered service member”:

(1) Except as otherwise provided in subparagraph (2), means a member of the armed forces who is serving on:

(I) Active duty pursuant to title 10, title 14 or title 32 of the United States Code, under a call or order that does not specify a period of 30 days or fewer; or

(II) Active Guard and Reserve duty, as that term is defined in 10 U.S.C. § 101(d)(6).

(2) Does not include a consumer who was a covered service member pursuant to subparagraph (1) at the time he or she became obligated on a consumer credit transaction or established an account for consumer credit but is no longer a covered service member pursuant to subparagraph (1) or a dependent of a person who is a covered service member pursuant to subparagraph (1).

(d) “Credit” means the right granted to a natural person by a person engaged in the business of extending consumer credit, or an assignee of such a person with respect to any consumer credit extended, to defer payment or to incur debt and defer its payment.

(e) “Dependent” with respect to a covered service member means:

(1) The spouse;

(2) A child who:

(I) Has not attained the age of 21;

(II) Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, as defined in 10 U.S.C. §

1072(3), and is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on the covered service member or former covered service member for over one-half of the child's support; or

(III) Is incapable of self-support because of a mental or physical incapacity that occurs while a dependent of a covered service member or former covered service member under sub-subparagraph (I) or (II) and is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on the member or former member for over one-half of the child's support;

(3) A parent or parent-in-law who is, or was at the time of the covered service member's or former covered service member's death, in fact dependent on him or her for over one-half of his or her support and residing in his or her household;

(4) An unmarried person who:

(I) Is placed in the legal custody of the covered service member or former covered service member as a result of an order of a court of competent jurisdiction in the United States, or possession of the United States, for a period of at least 12 consecutive months;

(II) Has not attained the age of 21, has not attained the age of 23 and is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, as defined in 10 U.S.C. § 1072(3), or is incapable of self-support because of a mental or physical incapacity that occurred while the person was considered a dependent of the covered service member or former covered service member pursuant to this paragraph;

(III) Is dependent on the covered service member or former covered service member for over one-half of the person's support;

(IV) Resides with the covered service member or former covered service member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other

circumstances as the administering Secretary, as defined in 10 U.S.C. § 1072(3), may by regulation prescribe; and

(V) Is not a dependent of a covered service member or a former covered service member pursuant to subparagraph (1), (2) or (3).

(f) “Dwelling” means a residential structure that contains one to four units, whether or not the structure is attached to real property. The term includes, without limitation, an individual condominium unit, cooperative unit, mobile home and manufactured home.

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The initiative also prohibits evading the interest rate cap by structuring transactions to mask their nature as loans covered by this measure, or partnering with out-of-state lenders to violate the rate cap. The initiative voids transactions that violate the cap, and establishes civil penalties.

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AFFIDAVIT OF CIRCULATOR

(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA

COUNTY OF _____

)
)
)

I, _____, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at

_____ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that the number of signatures affixed thereon is _____; and (6) that each person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

Signature of Circulator

Subscribed and sworn to or affirmed before me this

_____ day of _____, _____, by _____.

Notary Public or person authorized to administer oath

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Attorneys for Plaintiffs

FIRST JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADANS FOR FINANCIAL CHOICE, a
Nevada Political Action Committee, and
CHRISTINA BAUER, an Individual,

Plaintiffs,

v.

KATE FELDMAN, an Individual;
STOP PREDATORY LENDING NV, a
Nevada Non-Profit Corporation; and
FRANCISCO AGUIAR, in his Official
Capacity as Nevada Secretary of State,

Defendants.

Case No.: 24OC000181B
Dept. No.: II

**BRIEF IN SUPPORT OF FIRST
AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF CONCERNING STATE-WIDE
BALLOT INITIATIVE**

I. INTRODUCTION

Pursuant to NRS 295.061, Plaintiffs Nevadans for Financial Choice and Christina Bauer submit this brief in support of their First Amended Complaint for Declaratory Injunctive Relief Concerning State-Wide Ballot Initiative, addressing two initiatives both being styled "Preventing Predatory Payday and Other Loans Act." The proponents filed the first initiative with the Nevada Secretary of State as S-01-2024 (the "First Initiative") on January 5, 2024, and filed the second initiative S-03-2024 (the "Second Initiative") on January 24, 2024. Plaintiffs commenced this action against the First Initiative on January 26, 2024, explaining why it violates Nevada law, specifically, Nevada's single subject requirement and description of effect under NRS 295.009.

The Second Initiative is substantively identical, except it drops Sections 17 and 18 from the First Initiative, which proposed provisions addressing writs of garnishment and writs of execution. Other than that change, the Initiatives are the same. However, dropping Sections 17 and 18 does nothing to save the Second Initiative under Nevada law, as it continues to include a multitude of distinct subjects as evidenced by its efforts to amend a host of different chapters of the Nevada Revised Statutes. As Plaintiffs have previously set forth in their brief concerning the First Initiative, there is no single subject present as NRS 295.009(1)(a) requires. The proponents have simply cobbled together a host of distinct statutory provisions that lack a common nexus. The elimination of Sections 17 and 18 from the Second Initiative simply eliminates one of several single-subject problems and does nothing to salvage the Second Initiative. Accordingly, in the interest of judicial economy, Plaintiffs incorporate their brief filed with this Court on January 26, 2024, as though fully set forth herein.

For the reasons previously stated, the Second Initiative necessarily suffers from the defects which it retains from the First Initiative, including violating Nevada's single subject requirement as well as having a deceptive and incomplete description of effect. Plaintiffs limit this brief to pointing out a related defect which precludes either initiative from proceeding.

II. ANALYSIS

A. The Initiatives Also Violate Article 19, Section 3, of the Nevada Constitution.

The Nevada Constitution preserves for the voters the right to propose, amend or repeal legislation. Art. 19, § 2(1). But as the Constitution specifies, "[e]ach referendum petition and initiative petition shall include the full text of the measure proposed." Art. 19, § 3(1). This requirement, along with NRS 295.0575(6), is to provide and require that each signer of the initiative had the ability and "opportunity before signing to read the full text of the act or resolution upon which the initiative or referendum is demanded." NRS 295.0575(6). Failure to set forth the full and complete text of all proposed statutory changes violates Article 19, § 3.

Here, the sponsors of these initiatives ignore the requirements of Nevada law. They propose a whole host of sweeping statutory changes, simply referencing certain sections, but never setting forth the actual text of the various statutes that these initiatives would amend or repeal. Just one

1 example is the Initiatives' proposed Section 8(8) which would extend the new Chapter 604D to
2 "retail installment transactions." It then proposes to override the specific requirements of
3 NRS 97.285 without actually setting forth for potential signers just what that provision says or does.

4 Unless members of the public are walking around with copies of the Nevada Revised
5 Statutes, they have no way of ascertaining the actual changes to the law that these Initiatives are
6 proposing. What NRS 97.285 actually provides is that the Legislature established an exclusive set
7 of statutes governing "retail installment transactions." As NRS 97.285 provides, "[e]xcept as
8 otherwise provided by specific statute, the provisions of this chapter governing retail installment
9 transactions *are exclusive*, and the provisions of any other statute do not apply to retail installment
10 transactions governed by this chapter. If there is a conflict between the provisions of this chapter
11 and any other statute, *the provisions of this chapter control*." (Emphasis added.) Yet, both
12 proposed Initiatives would now eliminate this exclusivity by effectively repealing NRS 97.285, yet
13 the voters would never know that because this (and a host of other) statutory changes are not set
14 forth in the text.

15 The same is true for other sections, including (but not limited to) the proposed Section 8(10)
16 which purports to extend the reach of the proposed new Chapter 604D to banks and other financial
17 institutions. These Initiatives would amend/repeal a host of statutory provisions – NRS 662.015,
18 672.370, 672.460, 672.710, 673.225, 673.3272, 677.730 – without ever setting forth the actual text
19 of those provisions so that voters can read and understand the proposed changes. Again, this failure
20 not only underscores a multitude of separate subjects that the proponents seek to effect, but also
21 how the public is not being informed of the nature and magnitude of proposed statutory
22 amendments or what these Initiatives would repeal.

1 **III. CONCLUSION**

2 Simply eliminating one of the multitude of single-subject violations from the First Initiative
3 does not save the Second Initiative. They are both defective under Nevada law and should be
4 enjoined.

5 **AFFIRMATION**

6 The undersigned does hereby affirm that this document does not contain the social security
7 number of any person.

8 DATED this 14th day of February, 2024.

9 PISANELLI BICE-PLLC

10
11 By: 

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WILLIAM SCOTT HOEN
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Intervenor-Defendant*

IN THE FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR CARSON CITY

NEVADANS FOR FINANCIAL CHOICE,
a Nevada Political Action Committee, and
CHRISTINA BAUER, an individual,

Plaintiffs,

vs.

KATE FELDMAN, an individual, STOP
PREDATORY LENDING NV, a Nevada
Nonprofit Corp., and FRANCISCO V.
AGUILAR, in his official capacity as
Nevada Secretary of State,

Defendants,

Case No.: 24 OC 00018 1B

Dept. No.: II

DAILYPAY, INC., a Delaware
Corporation,

Plaintiff,

vs.

FRANCISCO V. AGUILAR, in his official
capacity as NEVADA SECRETARY OF
STATE,

Defendant,

and

STOP PREDATORY LENDING NV, a
Nevada Nonprofit Corp., and
KATE FELDMAN, an individual,

Intervenor-Defendants.

Case No.: 24 OC 00021 1B

Dept. No.: II

BRAVO SCHRAGER LLP

A00470

PREFERRED CAPITAL FUNDING-
NEVADA, LLC, a Nevada limited liability
company, and ALLIANCE FOR
RESPONSIBLE CONSUMER LEGAL
FUNDING, an Illinois nonprofit
corporation,

Plaintiffs,

vs.

FRANCISCO V. AGUILAR, in his official
capacity as NEVADA SECRETARY OF
STATE, and KATE FELDMAN, an
individual,

Defendants,

and

STOP PREDATORY LENDING NV, a
Nevada Nonprofit Corp.,

Intervenor-Defendant.

Case No.: 24 OC 00023 1B

Dept. No.: I

ACTIVEHOURS, INC., a Delaware
corporation; STACY PRESS, an
individual,

Plaintiffs,

vs.

KATE FELDMAN, an individual; STOP
PREDATORY LENDING NV, a Nevada
Nonprofit Corp.; and FRANCISCO V.
AGUILAR, in his official capacity as
NEVADA SECRETARY OF STATE,

Defendants.

Case No.: 24 OC 00029 1B

Dept. No.: I

STIPULATION AND ~~[PROPOSED]~~ SCHEDULING ORDER OF THE COURT

The Parties to this stipulation acknowledge the following:

On January 5, 2024, Kate Feldman filed Nevada Statutory Initiative Petition S-01-2024 ("Initiative #1"). On January 24, 2024, Ms. Feldman filed Nevada Statutory Initiative Petition S-03-2024 ("Initiative #2"). Both initiatives deal with similar topics and are filed by the same ballot measure proponents, though the

1 respective Petitions' compliance with Nevada's single-subject rule, NRS 295.009, is a
2 matter of dispute among the parties hereto, and no party to this Stipulation waives
3 or concedes any argument in that respect by virtue of entering into it.

4 On January 26, 2024, Plaintiffs NEVADANS FOR FINANCIAL CHOICE and
5 CHRISTINA BAUER filed a Complaint for Declaratory and Injunctive Relief
6 challenging the legal sufficiency of Initiative #1, pursuant to NRS 295.061, and a
7 Brief in Support of the Complaint, which became First Judicial District Case No. 24
8 OC 00018 1B, assigned to Department 2. This suit was filed against Ms. Feldman
9 and Nevada Secretary of State Francisco Aguilar, in his official capacity.
10 Subsequently, on February 14, 2024, Plaintiffs in Case No. 24 OC 00018 1B filed a
11 First Amended Complaint timely adding Initiative #2 to their challenge and Stop
12 Predatory Lending NV as an additional defendant.

13 On January 29, 2024, Plaintiff DAILYPAY, INC. filed a Complaint for
14 Declaratory and Injunctive Relief challenging the legal sufficiency of Initiative #1 and
15 Initiative #2, pursuant to NRS 295.061, which became First Judicial District Case
16 No. 24 OC 00021 1B, assigned to Department 2. This suit was filed against Nevada
17 Secretary of State Francisco Aguilar, in his official capacity.

18 On January 29, 2024, Plaintiffs PREFERRED CAPITAL FUNDING -
19 NEVADA, LLC and ALLIANCE FOR RESPONSIBLE CONSUMER LEGAL
20 FUNDING filed a Complaint for Declaratory and Injunctive Relief challenging the
21 legal sufficiency of Initiative #1 and Initiative #2, pursuant to NRS 295.061, which
22 became First Judicial District Case No. 24 OC 00023 1B, assigned to Department 1.¹
23 This suit was filed against Ms. Feldman and Nevada Secretary of State Francisco

24
25 ¹ While Plaintiffs PREFERRED CAPITAL FUNDING - NEVADA, LLC and
26 ALLIANCE FOR RESPONSIBLE CONSUMER LEGAL FUNDING ("Litigation
27 Funding Plaintiffs") stipulate to the consolidation of cases and intervention of parties
28 for purposes of judicial efficiency, it is Litigation Funding Plaintiffs' position that they
are factually and legally distinct from other parties covered by Initiative #1 and/or
Initiative #2 as the Litigation Funding Plaintiffs contend they are not lenders and
are otherwise governed by Nevada Revised Statutes Chapter 604C.

1 Aguilar, in his official capacity.

2 On February 13, 2024, Plaintiffs ACTIVEHOURS, INC. and STACY PRESS
3 filed a Complaint for Declaratory and Injunctive Relief challenging the legal
4 sufficiency of Initiative #2 pursuant to NRS 295.061, which became First Judicial
5 District Case No. 24 OC 00029, assigned to Department 1. This suit was filed against
6 Ms. Feldman, Stop Predatory Lending NV, and Nevada Secretary of State Francisco
7 Aguilar, in his official capacity.

8 **STIPULATION**

9 **THE PARTIES HEREBY STIPULATE AS FOLLOWS:**

10 1. All parties agree that consolidation of the actions referenced above is
11 appropriate here, for reasons of judicial economy and to avoid the possibility of
12 inconsistent resolutions of similar claims, as well as to observe the statutory charge
13 to resolve challenges to the legal sufficiency of filed initiative petitions in a prompt
14 manner. Nevada law favors consolidation of proceedings involving a common question
15 of law or fact. *See Marcuse v. Del Webb Cmtys., Inc.*, 123 Nev. 278, 286 (2007);
16 NRCP 42(a) (allowing consolidation of “actions involving a common question of law
17 or fact.”). The consolidated action shall bear the caption listed above, and shall result
18 in consolidation into and with the first-filed cases among these, First Judicial District
19 Case No. 24 OC 00018 1B, assigned to Department 2.

20 2. All respective parties stipulate to allowing Intervenor-Defendant STOP
21 PREDATORY LENDING NV, a Nevada nonprofit corporation serving as the
22 proponents’ ballot measure committee in support of both Initiative #1 and #2, to
23 intervene in each case identified herein where it was not previously joined as a
24 defendant.

25 3. All respective parties stipulate to allowing Ms. Feldman to intervene as
26 Intervenor-Defendant into the cases in which she has not been named, specifically
27 *DailyPay, Inc. v. Francisco V. Aguilar*, Case No.: 24 OC 00021 1B.
28

1 4. No party will object to the filing of memoranda of points and authorities
2 by any Plaintiffs who did not accompany their initial Complaints with such
3 memoranda, as long as such memoranda are filed on or before **February 14, 2024**,
4 are served upon the other parties in the manner contemplated by this Stipulation,
5 and are limited to ten (10) pages or fewer.

6 5. All parties agree to the following deadlines to file further briefing:

7 (a) Intervenor-Defendant Stop Predatory Lending NV and Kate
8 Feldman (collectively, "Proponents") will file an Omnibus
9 Response to all Plaintiffs by **February 28, 2024**. Given the
10 technical nature of the subject matter and the complexity and
11 length of the arguments and issues related to challenges to
12 Initiatives #1 and #2, as well as the multiple Plaintiffs making
13 disparate arguments, Proponents are not able to condense their
14 total Response to ten pages, per FJDCR 3.23(b), without omitting
15 relevant information necessary for the Court's consideration.
16 Therefore, Proponents shall be allotted up to thirty pages for their
17 Omnibus Response, though they state their intention to remain
18 well below that upper limit. Defendant Francisco V. Aguilar shall
19 file an answer and/or response brief by this time as well, but shall
20 observe the ten-page limit contemplated in FJDCR 3.23(b).

21 (b) Plaintiff(s) may file an Optional Reply by **March 8, 2024**.
22 Plaintiff(s) shall be allotted up to ten pages for their respective
23 Replies.

24 (c) The parties will submit proposed orders to the Court by
25 **March 8, 2024**. Pursuant to FJDCR 3.10, the proposed orders
26 must include a cover sheet, a statement of facts, the applicable
27 standard of law, analysis, and conclusions of law and an order.
28

1 (d) Pursuant to FJDCR 3.11, Plaintiffs will submit a request for
2 submission as soon as possible after submission of all briefs
3 discussed herein.

4 6. The parties agree to electronic service of all documents amongst
5 themselves pursuant to NRCP 5(b)(2), at the email addresses listed below, and to this
6 Court's judicial assistant, Billie Shadron, at bshadron@carson.org by the deadlines
7 stated herein. Physical copies of documents electronically served in accordance with
8 this Stipulation must be filed with the Court as soon as practicable thereafter,
9 preferably within two days following the deadline for scheduled filings, or within two
10 days of submission for all other papers.

11 7. The parties shall comply with FJDCR 3.2, which requires original
12 signatures on all pleadings and papers. The Court waives pre-hearing statements by
13 the parties.

14 8. Having agreed in good faith to observe the schedule contained in this
15 Stipulation, should any party to it seek preemption of the currently-assigned judicial
16 department, they each agree to abide by the schedule for submission of briefs herein,
17 and contemplate only the re-scheduling of the hearing date, at the discretion and
18 convenience of the newly-assigned judicial department shall be permitted.

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9. The Court shall hold a hearing on this matter on **March 22, 2024**, at
_____.M., to be held remotely or in person at the Court's discretion..

IT IS SO STIPULATED.

Dated this 10 day of February, 2024.

By: _____

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Lending NV*

Dated this ____ day of February, 2024.

By: _____

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*Attorneys for Defendant Francisco V.
Aguilar*

///

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Dated this 16th day of February, 2024.

By: _____

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*Attorneys for Plaintiffs Nevadans for
Financial Choice and Christina
Bauer*

Dated this ____ day of February, 2024.

By: _____

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jmdevoy@hollandhart.com
mcmorris@hollandhart.com
Counsel for Plaintiff DailyPay, Inc.

9. The Court shall hold a hearing on this matter on **March 22, 2024**, at
_____.M., to be held remotely or in person at the Court's discretion..

IT IS SO STIPULATED.

Dated this ____ day of February, 2024.

Dated this ____ day of February, 2024.

By: _____

By: _____

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*Attorneys for Plaintiffs Nevadans for
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Bauer*

Dated this ____ day of February, 2024.

Dated this 16 day of February, 2024.

By: _____

By:  _____

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jmdevoy@hollandhart.com
mcmorris@hollandhart.com
Counsel for Plaintiff DailyPay, Inc.

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1 9. The Court shall hold a hearing on this matter on **March 22, 2024**, at
2 9:00 A.M., to be held remotely or in person at the Court's discretion..

3 IT IS SO STIPULATED.

4 Dated this __ day of February, 2024.

Dated this __ day of February, 2024.

5 By: _____

6 Bradley S. Schrager (SBN 10217)
7 Daniel Bravo (SBN 13078)
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15 *Intervenor-Defendant Stop Predatory*
16 *Lending NV*

By: _____

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DRB@pisanellibice.com
Attorneys for Plaintiffs Nevadans for
Financial Choice and Christina
Bauer

15 Dated this 22nd day of February, 2024.

Dated this __ day of February, 2024.

16 By: 

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19 **GENERAL**
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23 *Attorneys for Defendant Francisco V.*
24 *Aguilar*

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1 Dated this 20th day of February, 2024.

2 By: Elizabeth M. Sorokac
3 Joshua H. Reisman (SBN 7152)
4 Elizabeth M. Sorokac (SBN 8270)
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13 Attorneys for Plaintiffs Preferred
14 Capital Funding- Nevada, LLC, and
15 Alliance For Responsible Consumer
16 Legal Funding

Dated this 21st day of February, 2024.

By: Severin A. Carlson
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Inc. and Stacy Press

ORDER

GOOD CAUSE APPEARING, this Court hereby adopts the Stipulation, and the actions are consolidated into and with the first-filed case, First Judicial District Case No. 24 OC 00018 1B, assigned to Department 2. The Court further adopts the Stipulation of the Parties as the Scheduling Order for this matter. The Parties shall adhere to all dates in the Stipulation.

DATED this 22nd day of February, 2024.

Krist. Luni
District Court Judge

Respectfully Submitted By: 13239
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2024 FEB 23 PM 3:00

Attorneys for Defendant Secretary of State

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

NEVADANS FOR FINANCIAL CHOICE,
a Nevada Political Action Committee, and
CHRISTINA BAUER, an individual,

Case No.: 24 OC 00018 1B

Dept. No. II

Plaintiffs,

vs.

KATE FELDMAN, an individual, STOP
PREDATORY LENDING NV, a Nevada
Nonprofit Corp., and FRANCISCO V.
AGUILAR, in his official capacity as
Nevada Secretary of State,

Defendants.

DAILYPAY, INC., A Delaware
Corporation,

Case No.: 24 OC 00021 1B

Dept. No. II

Plaintiff,

vs.

FRANCISCO V. AGUILAR, in his official
capacity as NEVADA SECRETARY OF
STATE

Defendant,

and

STOP PREDATORY LENDING NV, a
Nevada Nonprofit Corp., and KATE
FELDMAN, an individual,

Intervenor-Defendants.

1 PREFERRED CAPITAL FUNDING-
2 NEVADA, LLC, a Nevada limited
3 liability company, and ALLIANCE FOR
4 RESPONSIBLE CONSUMER LEGAL
5 FUNDING, an Illinois nonprofit
6 corporation,

7 Plaintiffs,

8 vs.

9 FRANCISCO V. AGUILAR, in his official
10 capacity as NEVADA SECRETARY OF
11 STATE, and KATE FELDMAN, an
12 individual

13 Defendants,

14 and

15 STOP PREDATORY LENDING NV, a
16 Nevada Nonprofit Corp.,

17 Intervenor-Defendant.

18 ACTIVEHOURS, INC., a Delaware
19 corporation; STACY PRESS, an
20 individual,

21 Plaintiffs,

22 vs.

23 KATE FELDMAN, an individual; STOP
24 PREDATORY LENDING NV, a Nevada
25 Nonprofit Corp.; and FRANCISCO V.
26 AGUILAR, in his official capacity as
27 NEVADA SECRETARY OF STATE.

28 Defendants.

Case No.: 24 OC 00023 1B

Dept. No. I

Case No.: 24 OC 00029 1B

Dept. No. I

SECRETARY OF STATE'S LIMITED OMNIBUS RESPONSE

Defendant Francisco V. Aguilar, in his official capacity as the Nevada Secretary of State, submits the following Limited Omnibus Response to the cases filed in this consolidated action.

The Secretary of State does not take a position on the legality of the proposed initiative petitions, Initiative Petitions S-01-2024 and S-03-2024. The cases were brought prior to the Secretary of State having the opportunity to consider certifying the proposed initiative petitions as sufficient pursuant to NRS 295.061(2). Plaintiffs and

1 Defendants/Intervenor-Defendants will make those arguments, and the Secretary of State
2 will comply with any final judgment in this case. The Secretary of State does not take a
3 position on the policy merits of the proposed initiative petitions. If deemed legal and
4 qualified for the 2024 general election ballot, Nevadan voters will have that debate and
5 make those policy decisions.

6 Under such circumstances, no award of attorneys' fees or costs is appropriate against
7 the Secretary of State.

8 AFFIRMATION

9 The undersigned does hereby affirm that the document entitled Secretary of State's
10 Limited Omnibus Response does not contain personal information as defined in NRS
11 239B.030(4), and further acknowledges that an affirmation will only be provided on any
12 additional documents if the document does contain personal information.

13 DATED this 23rd day of February, 2024.

14 AARON D. FORD
15 Attorney General

16 By: 

17 LAENA ST-JULES (Bar No. 15156)
18 Senior Deputy Attorney General
19 Office of the Attorney General
20 100 North Carson Street
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25 *Attorneys for Defendant Secretary of State*
26
27
28

CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General,
and that on this 23rd day of February, 2024, I served a true and correct copy of the foregoing
Secretary of State's Limited Omnibus Response, by electronic mail to:

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Aaron D. Van Sickle

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9 Attorneys for Kate Feldman and
10 Intervenor-Defendant

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IN THE FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR CARSON CITY

NEVADANS FOR FINANCIAL CHOICE,
a Nevada Political Action Committee, and
CHRISTINA BAUER, an individual,

Plaintiffs,

vs.

KATE FELDMAN, an individual, STOP
PREDATORY LENDING NV, a Nevada
Nonprofit Corp., and FRANCISCO V.
AGUILAR, in his official capacity as
Nevada Secretary of State,

Defendants,

Case No.: 24 OC 00018 1B

Dept. No.: II

DAILYPAY, INC., a Delaware
Corporation,

Plaintiff,

vs.

FRANCISCO V. AGUILAR, in his official
capacity as NEVADA SECRETARY OF
STATE,

Defendant,

and

STOP PREDATORY LENDING NV, a
Nevada Nonprofit Corp., and
KATE FELDMAN, an individual,

Intervenor-Defendants.

Case No.: 24 OC 00021 1B

Dept. No.: II

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PREFERRED CAPITAL FUNDING-
NEVADA, LLC, a Nevada limited liability
company, and ALLIANCE FOR
RESPONSIBLE CONSUMER LEGAL
FUNDING, an Illinois nonprofit
corporation,

Plaintiffs,

vs.

FRANCISCO V. AGUILAR, in his official
capacity as NEVADA SECRETARY OF
STATE, and KATE FELDMAN, an
individual,

Defendants,

and

STOP PREDATORY LENDING NV, a
Nevada Nonprofit Corp.,

Intervenor-Defendant.

ACTIVEHOURS, INC., a Delaware
corporation; STACY PRESS, an
individual,

Plaintiffs,

vs.

KATE FELDMAN, an individual; STOP
PREDATORY LENDING NV, a Nevada
Nonprofit Corp.; and FRANCISCO V.
AGUILAR, in his official capacity as
NEVADA SECRETARY OF STATE,

Defendants.

Case No.: 24 OC 00023 1B

Dept. No.: I

Case No.: 24 OC 00029 1B

Dept. No.: I

NOTICE OF ENTRY OF STIPULATION AND ORDER

NOTICE IS HEREBY GIVE that a STIPULATION AND SCHEDULING
ORDER OF THE COURT was entered in the above-captioned matter on the 22nd

1 day of February, 2024. A true and correct copy of the Stipulation and Order is
2 attached hereto as Exhibit 1.

3 **AFFIRMATION**

4 The undersigned hereby affirm that the foregoing document does not contain
5 the social security number of any person.

6 DATED this 23rd day of February, 2024.

7 **BRAVO SCHRAGER LLP**

8
9 By 

10 BRADLEY S. SCHRAGER, ESQ. (SBN 10217)
11 DANIEL BRAVO, ESQ. (SBN 13078)
12 6675 South Tenaya Way, Suite 200
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15 Email: bradley@bravoschrager.com
16 Email: daniel@bravoschrager.com

17 *Attorneys for Kate Feldman and Intervenor-Defendant*

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February, 2024, I served the foregoing
NOTICE OF ENTRY OF STIPULATION AND ORDER via electronic mail, per
the February 22, 2024, Stipulation and Scheduling Order of the Court, as follows:

Laena St Jules, Esq.
**OFFICE OF THE ATTORNEY
GENERAL**
LSJules@ag.nv.gov
*Attorneys for Defendant,
Francisco V. Aguilar*

Todd L. Bice, Esq.
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Daniel R. Brady, Esq.
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JTS@pisanellibice.com
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*Attorneys for Plaintiffs Nevada for
Financial Choice and Christina Bauer*

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Counsel for Plaintiff DailyPay, Inc.

Joshua H. Reisman, Esq.
Elizabeth M. Sorokac, Esq.
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*Attorneys for Plaintiffs Preferred Capital
Funding- Nevada, LLC, and Alliance
For Responsible Consumer Legal
Funding*

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*Attorneys for Plaintiffs Activehours, Inc.
and Stacy Press*

Billie Shadron
Judicial Assistant
First Judicial District Court, Dept. II
bshadron@csremn.org

By: 
Dannielle Fresquez, an Employee of
BRAVO SCHRAGER LLP

INDEX OF EXHIBITS

Exhibit No.	Document Title	No. of Pages
1	Stipulation and Scheduling Order of the Court	10

EXHIBIT 1

EXHIBIT 1

BRADLEY S. SCHRAGER, ESQ. (SBN 10217)
 DANIEL BRAVO, ESQ. (SBN 18078)
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 Attorneys for Kate Feldman and
 Intervenor-Defendant

FEB 22 PM 1:20

B. SHADRON

**IN THE FIRST JUDICIAL DISTRICT COURT
 OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

NEVADANS FOR FINANCIAL CHOICE,
 a Nevada Political Action Committee, and
 CHRISTINA BAUER, an individual,

Case No.: 24 OC 00018 1B

Dept. No.: II

Plaintiffs,

vs.

KATE FELDMAN, an individual, STOP
 PREDATORY LENDING NV, a Nevada
 Nonprofit Corp., and FRANCISCO V.
 AGUILAR, in his official capacity as
 Nevada Secretary of State,

Defendants,

DAILYPAY, INC., a Delaware
 Corporation,

Case No.: 24 OC 00021 1B

Dept. No.: II

Plaintiff,

vs.

FRANCISCO V. AGUILAR, in his official
 capacity as NEVADA SECRETARY OF
 STATE,

Defendant,

and

STOP PREDATORY LENDING NV, a
 Nevada Nonprofit Corp., and
 KATE FELDMAN, an individual,

Intervenor-Defendants.

1 **PREFERRED CAPITAL FUNDING-**
2 **NEVADA, LLC, a Nevada limited liability**
3 **company, and ALLIANCE FOR**
4 **RESPONSIBLE CONSUMER LEGAL**
5 **FUNDING, an Illinois nonprofit**
6 **corporation,**

7 **Plaintiffs,**

8 **vs.**

9 **FRANCISCO V. AGUILAR, in his official**
10 **capacity as NEVADA SECRETARY OF**
11 **STATE, and KATE FELDMAN, an**
12 **individual,**

13 **Defendants,**

14 **and**

15 **STOP PREDATORY LENDING NV, a**
16 **Nevada Nonprofit Corp.,**

17 **Intervenor-Defendant.**

Case No.: 24 OC 00028 1B

Dept. No.: I

18 **ACTIVEHOURS, INC., a Delaware**
19 **corporation; STACY PRESS, an**
20 **individual,**

21 **Plaintiffs,**

22 **vs.**

23 **KATE FELDMAN, an individual; STOP**
24 **PREDATORY LENDING NV, a Nevada**
25 **Nonprofit Corp.; and FRANCISCO V.**
26 **AGUILAR, in his official capacity as**
27 **NEVADA SECRETARY OF STATE,**

28 **Defendants.**

Case No.: 24 OC 00028 1B

Dept. No.: I

STIPULATION AND [PROPOSED] SCHEDULING ORDER OF THE COURT

The Parties to this stipulation acknowledge the following:

On January 5, 2024, Kate Feldman filed Nevada Statutory Initiative Petition S-01-2024 ("Initiative #1"). On January 24, 2024, Ma. Feldman filed Nevada Statutory Initiative Petition S-03-2024 ("Initiative #2"). Both initiatives deal with similar topics and are filed by the same ballot measure proponents, though the

1 respective Petitions' compliance with Nevada's single-subject rule, NRS 295.009, is a
2 matter of dispute among the parties hereto, and no party to this Stipulation waives
3 or concedes any argument in that respect by virtue of entering into it.

4 On January 26, 2024, Plaintiffs NEVADANS FOR FINANCIAL CHOICE and
5 CHRISTINA BAUER filed a Complaint for Declaratory and Injunctive Relief
6 challenging the legal sufficiency of Initiative #1, pursuant to NRS 295.061, and a
7 Brief in Support of the Complaint, which became First Judicial District Case No. 24
8 OC 00018 1B, assigned to Department 2. This suit was filed against Ms. Feldman
9 and Nevada Secretary of State Francisco Aguilar, in his official capacity.
10 Subsequently, on February 14, 2024, Plaintiffs in Case No. 24 OC 00018 1B filed a
11 First Amended Complaint timely adding Initiative #2 to their challenge and Stop
12 Predatory Lending NV as an additional defendant.

13 On January 29, 2024, Plaintiff DAILYPAY, INC. filed a Complaint for
14 Declaratory and Injunctive Relief challenging the legal sufficiency of Initiative #1 and
15 Initiative #2, pursuant to NRS 295.061, which became First Judicial District Case
16 No. 24 OC 00021 1B, assigned to Department 2. This suit was filed against Nevada
17 Secretary of State Francisco Aguilar, in his official capacity.

18 On January 29, 2024, Plaintiffs PREFERRED CAPITAL FUNDING -
19 NEVADA, LLC and ALLIANCE FOR RESPONSIBLE CONSUMER LEGAL
20 FUNDING filed a Complaint for Declaratory and Injunctive Relief challenging the
21 legal sufficiency of Initiative #1 and Initiative #2, pursuant to NRS 295.061, which
22 became First Judicial District Case No. 24 OC 00023 1B, assigned to Department 1.¹
23 This suit was filed against Ms. Feldman and Nevada Secretary of State Francisco
24

25 ¹ While Plaintiffs PREFERRED CAPITAL FUNDING - NEVADA, LLC and
26 ALLIANCE FOR RESPONSIBLE CONSUMER LEGAL FUNDING ("Litigation
27 Funding Plaintiffs") stipulate to the consolidation of cases and intervention of parties
28 for purposes of judicial efficiency, it is Litigation Funding Plaintiffs' position that they
are factually and legally distinct from other parties covered by Initiative #1 and/or
Initiative #2 as the Litigation Funding Plaintiffs contend they are not lenders and
are otherwise governed by Nevada Revised Statutes Chapter 604C.

1 Aguilar, in his official capacity.

2 On February 19, 2024, Plaintiffs ACTIVEHOURS, INC. and STACY PRESS
3 filed a Complaint for Declaratory and Injunctive Relief challenging the legal
4 sufficiency of Initiative #2 pursuant to NRS 395.061, which became First Judicial
5 District Case No. 24 DC 00020, assigned to Department 1. This suit was filed against
6 Ms. Feldman, Stop Predatory Lending NV, and Nevada Secretary of State Francisco
7 Aguilar, in his official capacity.

8 **STIPULATION**

9 **THE PARTIES HEREBY STIPULATE AS FOLLOWS:**

10 1. All parties agree that consolidation of the actions referenced above is
11 appropriate here, for reasons of judicial economy and to avoid the possibility of
12 inconsistent resolutions of similar claims, as well as to observe the statutory charge
13 to resolve challenges to the legal sufficiency of filed initiative petitions in a prompt
14 manner. Nevada law favors consolidation of proceedings involving a common question
15 of law or fact. See *Marcuse v. Del Webb Constr., Inc.*, 128 Nev. 278, 286 (2007);
16 NRCP 42(a) (allowing consolidation of "actions involving a common question of law
17 or fact."). The consolidated action shall bear the caption listed above, and shall result
18 in consolidation into and with the first-filed cases among these, First Judicial District
19 Case No. 24 DC 00018 1B, assigned to Department 2.

20 2. All respective parties stipulate to allowing Intervenor-Defendant STOP
21 PREDATORY LENDING NV, a Nevada nonprofit corporation serving as the
22 proponents' ballot measure committee in support of both Initiative #1 and #2, to
23 intervene in each case identified herein where it was not previously joined as a
24 defendant.

25 3. All respective parties stipulate to allowing Ms. Feldman to intervene as
26 Intervenor-Defendant into the cases in which she has not been named, specifically
27 *DailyPay, Inc. v. Francisco V. Aguilar*, Case No. 24 DC 00021 1B.
28

1 d. No party will object to the filing of memoranda of points and authorities
2 by any Plaintiffs who did not accompany their Initial Complaints with such
3 memoranda, as long as such memoranda are filed on or before February 14, 2024,
4 are served upon the other parties in the manner contemplated by this Stipulation,
5 and are limited to ten (10) pages or fewer.

6 b. All parties agree to the following deadlines to file further briefing:

7 (a) Intervenor-Defendant Stop Predatory Lending NV and Kate
8 Feldman (collectively, "Proponents") will file an Omnibus
9 Response to all Plaintiffs by February 28, 2024. Given the
10 technical nature of the subject matter and the complexity and
11 length of the arguments and issues related to challenges to
12 Initiatives #1 and #2, as well as the multiple Plaintiffs making
13 disparate arguments, Proponents are not able to condense their
14 total Response to ten pages, per FJDCR 3.23(b), without omitting
15 relevant information necessary for the Court's consideration.
16 Therefore, Proponents shall be allotted up to thirty pages for their
17 Omnibus Response, though they state their intention to remain
18 well below that upper limit. Defendant Francisco V. Aguilar shall
19 file an answer and/or response brief by this time as well, but shall
20 observe the ten-page limit contemplated in FJDCR 3.23(b).

21 (b) Plaintiff(s) may file an Optional Reply by March 8, 2024.
22 Plaintiff(s) shall be allotted up to ten pages for their respective
23 Replies.

24 (c) The parties will submit proposed orders to the Court by
25 March 8, 2024. Pursuant to FJDCR 3.10, the proposed orders
26 must include a cover sheet, a statement of facts, the applicable
27 standard of law, analysis, and conclusions of law and an order.
28

1 (d) Pursuant to FJDCR 3.11, Plaintiffs will submit a request for
2 submission as soon as possible after submission of all briefs
3 discussed herein.

4 6. The parties agree to electronic service of all documents amongst
5 themselves pursuant to NRCP 5(b)(2), at the email addresses listed below, and to this
6 Court's judicial assistant, Billie Shadron, at bshadron@carson.org by the deadlines
7 stated herein. Physical copies of documents electronically served in accordance with
8 this Stipulation must be filed with the Court as soon as practicable thereafter,
9 preferably within two days following the deadline for scheduled filings, or within two
10 days of submission for all other papers.

11 7. The parties shall comply with FJDCR 3.2, which requires original
12 signatures on all pleadings and papers. The Court waives pre-hearing statements by
13 the parties.

14 8. Having agreed in good faith to observe the schedule contained in this
15 Stipulation, should any party to it seek preemption of the currently-assigned judicial
16 department, they each agree to abide by the schedule for submission of briefs herein,
17 and contemplate only the re-scheduling of the hearing date, at the discretion and
18 convenience of the newly-assigned judicial department shall be permitted.

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1 9. The Court shall hold a hearing on this matter on **March 22, 2024**, at
2 _____ M., to be held remotely or in person at the Court's discretion..

3 **IT IS SO STIPULATED.**

4 Dated this 16th day of February, 2024.

5 By: 
6 **Bradley S. Schrager (SBN 10217)**
7 **Daniel Bravo (SBN 13075)**
8 **BRAVO SCHRAGER LLP**
9 **6675 South Tenaya Way, Suite 200**
10 **Las Vegas, Nevada 89113**
11 **Tele.: (702) 996-1724**
12 **bradley@bravoschrager.com**
13 **daniel@bravoschrager.com**
14 **Attorneys for Kate Feldman and**
15 **Intervenor-Defendant Stop Predatory**
16 **Lending NV**

Dated this 16th day of February, 2024.

By: 
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Jordan T. Smith (SBN 12097)
Daniel R. Brady (SBN 15508)
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JTS@pisanellibice.com
DRB@pisanellibice.com
Attorneys for Plaintiffs Nevadans for
Financial Choice and Christina
Bauer

16 Dated this ___ day of February, 2024.

16 By: _____
17 **Laena St Jules (SBN 15156)**
18 **OFFICE OF THE ATTORNEY**
19 **GENERAL**
20 **100 N. Carson Street**
21 **Carson City, Nevada 89701**
22 **LStJules@ag.nv.gov**
23 **Attorneys for Defendant Francisco V.**
24 **Aguilar**

Dated this ___ day of February, 2024.

By: _____
J. Malcolm DeVoy (SBN 11950)
Matthew Morris (SBN 15068)
HOLLAND & HART LLP
5441 Kietzke Lane
Reno, Nevada 89511
jmdevoy@hollandhart.com
memorris@hollandhart.com
Counsel for Plaintiff DailyPay, Inc.

23 ///
24 ///
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1 9. The Court shall hold a hearing on this matter on March 22, 2024, at
2 _____ M., to be held remotely or in person at the Court's discretion..

3 IT IS SO STIPULATED.

4 Dated this ____ day of February, 2024.

Dated this ____ day of February, 2024.

5 By: _____
6 Bradley S. Schrager (SBN 10217)
7 Daniel Bravo (SBN 13078)
8 **BRAVO SCHRAGER LLP**
9 6675 South Tenaya Way, Suite 200
10 Las Vegas, Nevada 89113
11 Tele.: (702) 996-1724
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14 Attorneys for Kate Feldman and
15 Intervenor-Defendant Stop Predatory
16 Lending NV

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Jordan T. Smith (SBN 12097)
Daniel R. Brady (SBN 15508)
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Las Vegas, Nevada 89101
TLB@pisanellibice.com
JTS@pisanellibice.com
DRB@pisanellibice.com
Attorneys for Plaintiffs Nevadaans for
Financial Choice and Christina
Bauer

15 Dated this ____ day of February, 2024.

Dated this 16 day of February, 2024.

16 By: _____
17 Laena St Jules (SBN 15156)
18 **OFFICE OF THE ATTORNEY**
19 **GENERAL**
20 100 N. Carson Street
21 Carson City, Nevada 89701
22 LStJules@sag.nv.gov
23 Attorneys for Defendant Francisco V.
24 Aguilar

By:  _____
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jmdevoy@hollandhart.com
mmorris@hollandhart.com
Counsel for Plaintiff DailyPay, Inc.

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1 9. The Court shall hold a hearing on this matter on March 22, 2024, at
2 9:00 A.M., to be held remotely or in person at the Court's discretion.

3 IT IS SO STIPULATED.

4 Dated this __ day of February, 2024. Dated this __ day of February, 2024.

5 By: _____	5 By: _____
6 Bradley S. Schrager (SBN 10217)	Todd L. Bice (SBN 4534)
7 Daniel Bravo (SBN 13078)	Jordan T. Smith (SBN 12097)
8 BRAVO SCHRAGER LLP	Daniel R. Brady (SBN 15508)
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13 daniel@bravoschrager.com	JTS@pisanellibice.com
14 Attorneys for Kate Feldman and	DRB@pisanellibice.com
15 Intervenor-Defendant Stop Predatory	Attorneys for Plaintiffs Nevadans for
16 Lending NV	Financial Choice and Christina
	Bauer

15 Dated this 26th day of February, 2024. Dated this __ day of February, 2024.

16 By:  _____	16 By: _____
17 Laena St Jules (SBN 15166)	J. Malcolm DeVoy (SBN 11950)
18 OFFICE OF THE ATTORNEY	Matthew Morris (SBN 15068)
19 GENERAL	HOLLAND & HART LLP
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23 Attorneys for Defendant Francisco V.	memorris@hollandhart.com
24 Aguilar	Counsel for Plaintiff DailyPay, Inc.

23 ///
24 ///
25 ///
26 ///
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28 ///

1 Dated this 20th day of February, 2024.

2 By: Charlottesville M. Sorokac

3 Joshua H. Reisman (SBN 7152)

4 Elizabeth M. Sorokac (SBN 8270)

5 Michael R. Kalish (SBN 12798)

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8 mkalish@rcnvlaw.com

Attorneys for Plaintiffs Preferred

9 Capital Funding- Nevada, LLC, and

10 Alliance For Responsible Consumer

Legal Funding

Dated this 21st day of February, 2024.

By: Severin A. Carlson

Severin A. Carlson (SBN 9373)

Sihomara L. Graves (SBN 13239)

KAEMPFER CROWELL

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Reno, Nevada 89501

scarlson@kcnvlaw.com

sgraves@kcnvlaw.com

Attorneys for Plaintiffs Activehours,

Inc. and Stacy Press

12 **ORDER**

13 GOOD CAUSE APPEARING, this Court hereby adopts the Stipulation, and
14 the actions are consolidated into and with the first-filed case, First Judicial District
15 Case No. 24 OC 00018 1B, assigned to Department 2. The Court further adopts the
16 Stipulation of the Parties as the Scheduling Order for this matter. The Parties shall
17 adhere to all dates in the Stipulation.

18 DATED this 22nd day of February, 2024.

19 Kate L. Lewis
20 District Court Judge

21 Respectfully Submitted By:

22 Bradley S. Schrager 15257

23 Daniel Bravo (SBN 13078)

24 **BRAVO SCHRAGER LLP**

6675 South Tenaya Way, Suite 200

25 Las Vegas, Nevada 89113

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daniel@bravoschrager.com

27 Attorneys for Intervenor-Defendants Stop

28 Predatory Lending NV & Kate Feldman

REC'D & FILED

2024 FEB 28 AM 11:14

WILLIAM SCOTT HOEN
CLERK

5 BARAJAS

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Attorneys for Plaintiffs

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

NEVADANS FOR FINANCIAL CHOICE, a
Nevada Political Action Committee, and
CHRISTINA BAUER, an Individual,

Plaintiffs,

v.

KATE FELDMAN, an individual, STOP
PREDATORY LENDING NV, a Nevada
Nonprofit Corp., and FRANCISCO
AGUILAR, in his official capacity as Nevada
Secretary of State,

Defendants.

Case No.: 24 OC 000018 1B

Dept. No.: II

ACCEPTANCE OF SERVICE

Pursuant to NRCP 4.2(a)(3), I acknowledge that I am duly authorized to, and have accepted
service of the


- (1) Summons, issued January 26, 2024;
- (2) Summons for the First Amended Complaint, issued February 14, 2024;
- (3) First Amended Complaint for Declaratory and Injunctive Relief Concerning Statewide
Ballot Initiatives – S-01-2024 and S-03-2024, filed February 14, 2024;
- (4) Brief in Support of First Amended Complaint for Declaratory and Injunctive Relief
Concerning State-Wide Ballot Initiative, filed February 14, 2024; and
- (5) Brief in Support of Complaint for Declaratory and Injunctive Relief Concerning State-
Wide Ballot Initiative, filed January 26, 2024.

1 in the above-captioned matter on behalf of Defendant Francisco Aguilar.

2 Nothing in this Acceptance of Service shall be deemed a waiver or forfeiture of any
3 defenses or arguments Defendant Francisco Aguilar may have, which are expressly reserved.

4 DATED this 23rd day of February 2024.

5 AARON D. FORD
6 Attorney General

7 By: 
8 Laena St-Jules, Esq. (Bar No. 15156)
9 Senior Deputy Attorney General
10 Office of the Attorney General
11 100 N. Carson Street
12 Carson City, NV 89701
13 T: (775) 684-1265
14 E: lstjules@ag.nv.gov

15 *Attorney for Defendant Francisco Aguilar*

REC'D & FILED

2024 FEB 28 AM 11:14

WILLIAM SCOTT HOEN
CLERK

BY S. BARAJAS

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Attorneys for Plaintiffs

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

NEVADANS FOR FINANCIAL CHOICE, a
Nevada Political Action Committee, and
CHRISTINA BAUER, an Individual,

Case No.: 24 DC 0000181B

Dept. No.: II

Plaintiffs,

v.

ACCEPTANCE OF SERVICE

KATE FELDMAN, an individual, STOP
PREDATORY LENDING NV, a Nevada
Nonprofit Corp., and FRANCISCO
AGUILAR, in his official capacity as Nevada
Secretary of State,

Defendants.

Pursuant to NRCP 4.2(a)(3), I acknowledge that I am duly authorized to, and have accepted
service of the

- (1) Summons, issued January 26, 2024;
- (2) Summons for the First Amended Complaint, issued February 14, 2024;
- (3) First Amended Complaint for Declaratory and Injunctive Relief Concerning Statewide
Ballot Initiatives – S-01-2024 and S-03-2024, filed February 14, 2024;
- (4) Brief in Support of First Amended Complaint for Declaratory and Injunctive Relief
Concerning State-Wide Ballot Initiative, filed February 14, 2024; and
- (5) Brief in Support of Complaint for Declaratory and Injunctive Relief Concerning State-
Wide Ballot Initiative, filed January 26, 2024,

1 in the above-captioned matter on behalf of Defendants Kate Feldman and Stop Predatory Lending
2 NV.

3 Nothing in this Acceptance of Service shall be deemed a waiver or forfeiture of any
4 defenses or arguments Defendants Kate Feldman and Stop Predatory Lending NV may have,
5 which are expressly reserved.

6 DATED this 23rd day of February, 2024.

7 BRAVO SCHRAGER LLP

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7 **IN THE FIRST JUDICIAL DISTRICT COURT**
8 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

9 NEVADANS FOR FINANCIAL CHOICE,
10 a Nevada Political Action Committee, and
11 CHRISTINA BAUER, an individual,

12 Plaintiffs,

13 vs.

14 KATE FELDMAN, an individual, STOP
PREDATORY LENDING NV, a Nevada
Nonprofit Corp., and FRANCISCO V.
15 AGUILAR, in his official capacity as
Nevada Secretary of State,

16 Defendants.

17
18 DAILYPAY, INC., a Delaware
Corporation,

19 Plaintiff,

20 vs.

21 FRANCISCO V. AGUILAR, in his official
22 capacity as NEVADA SECRETARY OF
STATE,

23 Defendant,

24 and

25 STOP PREDATORY LENDING NV, a
26 Nevada Nonprofit Corp., and
KATE FELDMAN, an individual,

27 Intervenor-Defendants.
28

Lead Case No.: 24 OC 00018 1B

Dept. No.: II

Consolidated with

Case No.: 24 OC 00021 1B

Dept. No.: II

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1 PREFERRED CAPITAL FUNDING-
2 NEVADA, LLC, a Nevada limited liability
3 company, and ALLIANCE FOR
4 RESPONSIBLE CONSUMER LEGAL
5 FUNDING, an Illinois nonprofit
6 corporation,

7 Plaintiffs,

8 vs.

9 FRANCISCO V. AGUILAR, in his official
10 capacity as NEVADA SECRETARY OF
11 STATE, and KATE FELDMAN, an
12 individual,

13 Defendants,

14 and

15 STOP PREDATORY LENDING NV, a
16 Nevada Nonprofit Corp.,

17 Intervenor-Defendant.

18 ACTIVEHOURS, INC., a Delaware
19 corporation; STACY PRESS, an
20 individual,

21 Plaintiffs,

22 vs.

23 KATE FELDMAN, an individual; STOP
24 PREDATORY LENDING NV, a Nevada
25 Nonprofit Corp.; and FRANCISCO V.
26 AGUILAR, in his official capacity as
27 NEVADA SECRETARY OF STATE,

28 Defendants.

Case No.: 24 OC 00023 1B

Dept. No.: I

Case No.: 24 OC 00029 1B

Dept. No.: I

23 ***DEFENDANTS/INTERVENORS KATE FELDMAN'S AND STOP***
24 ***PREDATORY LENDING NV'S OMNIBUS RESPONSE***

25
26 Defendant KATE FELDMAN and STOP PREDATORY LENDING NV
27 (collectively, "Proponents" or "Defendants") here submit their Memorandum of Points
28 and Authorities in opposition to the complaint and memoranda filed by Plaintiffs in

1 this consolidated action. It is based upon a challenge to two statewide statutory
2 initiative petitions, all papers and exhibits on file herein, and any argument the Court
3 sees fit to allow at hearing on this matter.

4 DATED this 28th day of February, 2024.

5 **BRAVO SCHRAGER LLP**

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1 MEMORANDUM OF POINTS & AUTHORITIES

2 I. INTRODUCTION

3 No industry likes legislation that may affect its business, especially not
4 through ballot initiatives, which threaten to expose financial interests to popular
5 sentiment. But in the context of direct democracy, as long as the proponents of an
6 initiative petition observe the basic tenets of form and procedure and then gather
7 enough signatures from the electorate, the people get to decide at the ballot box.

8 Here, Plaintiffs seek to prevent two initiative measures from reaching the
9 ballot based on array of grounds that mostly come down to the fact that they are
10 opposed to the policy changes these initiatives represent. Plaintiff Nevadans for
11 Financial Choice is essentially correct when it states that a part of the policy
12 underpinning the two measures is to establish standards by which to regulate
13 usurious behavior by lenders and others in Nevada. That is one way of saying that
14 there are effectively no usury laws here currently. The common usage of "usury" is
15 *the lending of money at unconscionable or exorbitant rates of interest.*¹ Similarly,
16 Nevada lacks sufficient asset protections for debtors who suffer from an inability to
17 keep up with payments of interest rates that can reach 300 – 500% annually. Here,
18 the components of the Petitions complement one another to achieve a single goal:
19 ensuring Nevadans have better debt protections. The initiatives will require
20 financiers to be more diligent about lending, and also ensure that a consumer's last
21 dime won't go towards paying off a short-term loan in a cycle of repayment at
22 spiraling rates. The fact that Petition #1 has more policy content than Petition #2 is
23 not material to the analysis by this Court. Nevada ballot measure history is replete
24 with proposed measures with multiple *changes* to current law that do not violate the
25 single-subject rule; *changes to existing law* do not equal *subjects* in Nevada Supreme
26

27 ¹ See, e.g., "Usury," Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/usury>, (last accessed Feb. 24, 2024).

1 Court jurisprudence. See *Hallon v. Nevada Voters First PAC*, 138 Nev. Adv. Op. 45,
2 512 P.3d 809, 315 n.5 (2022). With these ballot measures, Nevadans will have the
3 opportunity to decide for themselves if a 36% interest limit on debt and the greater
4 protections for basic assets in debt collection proceedings represent the will of the
5 people.

6 To stop the voters from considering these initiatives, as Plaintiffs wish to do,
7 Plaintiffs must show here not that the project is unwise or the wrong policy for
8 Nevada consumers; nor that these Plaintiffs provide services that many people use;
9 nor that the provisions of these Petitions run counter to the ways these companies
10 have been regulated previously. None of that matters. Those are all issues for these
11 parties' eventual election campaign in opposition, but they are not legal arguments.
12 Instead, these Plaintiffs have to demonstrate to this Court that—within the bounds
13 of what is and is not permitted in *pre-election* challenges to filed initiative petitions—
14 these two filed measures are clearly invalid, such that a court cannot permit them to
15 be circulated for signatures by registered Nevada voters.²

16 Despite their intense collective efforts, however, Plaintiffs cannot meet their
17 heavy burden to invalidate either Petition. Each of Initiative Petition S-01-2024 and
18 Initiative Petition S-03-2024 comprises a single-subject under NRS 295.009(1)(a)
19 and (2); contains a perfectly accurate and non-misleading description of effect
20 pursuant to NRS 295.009(1)(b); and does not run afoul either of Article 19, section 6's
21 prohibition on unfunded mandates, or Article 3, Section 1's "full text" requirement.³
22 See Nev. Const. art. 19, § 6; Nev. Const. art. 3, § 1. Everything about the two Petitions
23 is straightforward, succinct, and clearly described within the statutory parameters of
24 a 200-word description. The Petitions provide Nevadans with what they need to make
25

26 ² It is also worth noting that the terms of the Petitions only apply to transactions
27 engaged in by earned-wage access Plaintiffs like DailyPay and ActiveHours after SB
28 290, by its own terms, sunsets in 2030. See Nev. for Fin. Choice Amend. Compl.
Exs. 1 (Petition #1), 2 (Petition #2); DailyPay Memo., Ex. 1 (SB 290).

1 informed decisions about whether to affix their signatures and place them on a
2 general election ballot. Plaintiffs' white-hot opposition to the policies contained in
3 these two Petitions is understandable in light of their business interests, but there
4 are no grounds for this Court to invalidate either Petition prior to their circulation
5 among the voters.

6 II. STATEMENT OF FACTS

7 On January 5, 2024, Kate Feldman filed Nevada Statutory Initiative Petition
8 S-01-2024 ("Petition #1"). On January 24, Ms. Feldman filed Nevada Statutory
9 Initiative Petition S-03-2024 ("Petition #2").

10 On January 26, Plaintiffs NEVADANS FOR FINANCIAL CHOICE, and
11 CHRISTINA BAUER (collectively, "Nevadans for Financial Choice" or "NFFC") filed
12 a Complaint for Declaratory and Injunctive Relief challenging the legal sufficiency of
13 Petition #1, pursuant to NRS 295.061, and a Brief in Support of the Complaint.
14 Subsequently, on February 14, Plaintiffs Nevadans for Financial Choice filed a First
15 Amended Complaint timely adding Petition #2 to their challenge.

16 On January 29, Plaintiff DAILYPAY, INC. ("DailyPay") filed a Complaint for
17 Declaratory and Injunctive Relief challenging the legal sufficiency of both Petition #1
18 and Petition #2, pursuant to NRS 295.061.

19 On January 29, Plaintiffs PREFERRED CAPITAL FUNDING - NEVADA
20 LLC and ALLIANCE FOR RESPONSIBLE CONSUMER LEGAL FUNDING
21 (collectively, "Preferred Capital") filed a Complaint for Declaratory and Injunctive
22 Relief challenging the legal sufficiency of both Petition #1 and Petition #2, pursuant
23 to NRS 295.061.

24 On February 13, Plaintiffs ACTIVEHOURS, INC. and STACY PRESS
25 (collectively, "ActiveHours") filed a Complaint for Declaratory and Injunctive Relief
26 challenging the legal sufficiency of Petition #2 pursuant to NRS 295.061.

27 On or about February 22, the parties stipulated to, and the Court ordered, that
28 the filed suits be consolidated into one action, and the parties further agreed to

1 briefing and hearing schedules, as well as sundry procedural matters designed to
2 make the matter more efficient in terms of judicial economy.

3 **III. LEGAL STANDARD**

4 This case turns on the proper interpretation of NRS 295.009; Article 19,
5 Section 6 of the Nevada Constitution; and the Petitions. These are questions of law.
6 *Pech v. Zipf*, 133 Nev. 890, 892, 407 P.3d 775, 778 (2017). Emphatically, plaintiffs
7 “challenging the initiative petition bear the burden of demonstrating the proposed
8 initiative is clearly invalid.” *Hallon*, 512 P.3d at 813 (emphasis supplied).

9 **IV. LEGAL ARGUMENT**

10 The Petitions satisfy the requirements imposed by NRS 295.009 and the
11 Nevada Constitution. Each concerns a single subject, has an appropriate description
12 of effect, and does not mandate the expenditure of any state funds. They are properly-
13 proposed statutory initiative petitions, not referenda, and they contain exactly the
14 amount of text required by the Nevada Constitution in order to gather signatures to
15 establish Nevadan’s desire to refer these Petitions to the general election ballot.
16 These Petitions are examples of Nevada’s vibrant culture of direct democracy, and
17 they meet the requirements for proposing statutory ballot measures.

18 **A. The Constitutional Right To Initiatives In Nevada**

19 Initiative is the power of the people to propose bills and laws and to enact or
20 reject them at the polls, independent of the legislative assembly. *See Reo v. City of*
21 *Reno*, 76 Nev. 483, 486, 357 P.2d 585, 586 (1960). The constitutional rights of Nevada
22 to propose initiatives and referenda are sacrosanct, and courts are charged with
23 preserving those rights in every way it can. *See, generally*, Nev. Const. art. 19. And,
24 just as in the case of regular legislation, “[i]n determining whether a ballot initiative
25 proponent has complied with NRS 295.009, it is not the function of this court to judge
26 the wisdom of the proposed initiative.” *Hallon*, 512 P.3d at 316 (quoting *Educ.*
27 *Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 41, 293 P.3d 874, 878
28 (2013)).

1 The Nevada Supreme Court “has consistently held that the initiative powers
2 granted to Nevada’s electorate are broad.” *We People Nevada ex rel. Angle v. Miller*,
3 124 Nev. 874, 886, 192 P.3d 1166, 1174 (2008). Furthermore, the Court exercises
4 “every effort to sustain and preserve the people’s constitutional right” under
5 Article 19. *Id.*

6 The people’s initiative power “is legislative in nature.” *Nevadans for the Prot.*
7 *of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 914, 141 P.3d 1235, 1248 (2006). “The
8 people’s initiative power is ‘coequal, coextensive, and concurrent’ with that of the
9 Legislature; thus, the people have power that is legislative in nature.” *Id.*, 122 Nev.
10 at 914 (quoting *Gallivan v. Walker*, 54 P.3d 1069, 1080 (Utah 2002)); see also *Educ.*
11 *Freedom PAC v. Reid*, 138 Nev. Adv. Op. 47, 512 P.3d 296, 302 (2022). Because the
12 people’s initiative power is legislative in nature, that power is subject to the same
13 prerogatives and limitations placed upon a Legislature. *Educ. Freedom PAC v. Reid*,
14 512 P.3d at 305; see also *State ex rel. Stenberg v. Moore*, 302 N.W.2d 465, 474, 258
15 Neb. 199, 210 (1999) (“the Legislature and the electorate are concurrently equal in
16 rank as sources of legislation”).

17 In other words, an important initial question that the majority of the Plaintiffs
18 here do not seem to consider is whether the measure under consideration could, in
19 fact, be proposed and enacted by the Nevada Legislature itself. Here, the answer is
20 obviously yes—the Nevada Legislature could propose and pass a bill that defines
21 certain transactions as “loans,” limits interest rates on those transactions, and
22 expands the existing protections of individuals’ assets for consumers facing debt
23 collection. The fact that there are existing laws touching on these topics enacted by
24 the Legislature is only proof that these choices lay within the legislative capacity of
25 the People with which Proponents are engaging.

26 In fact, ActiveHours, DailyPay, and Preferred Capital all end up rebutting
27 their own arguments. For instance, if, as they claim, the Legislature has defined
28 particular transactions in a certain way previously, the People acting in their

1 legislative capacity through the initiative process have full freedom to define them
2 otherwise. ActiveHours goes so far as to title one of its section headings, "The
3 Initiative Defines and Treats Earned Wage Access in a Manner Contrary to Current
4 Nevada Law," to which the obvious answer is, "so what?" It is entirely irrelevant that
5 the Legislature has regulated these industries differently up until now; that is, in
6 fact, the very point of the popular initiative process, to permit citizens to propose and
7 enact legislation "independent of the legislative assembly." *Rea*, 78 Nev. at 486.

8 Plaintiffs are free to disagree vehemently with the policies embodied in the
9 Petitions, and to conduct a vigorous campaign in opposition; this is quite apart from
10 arguing that because there are statutory differences in how current law or the
11 proposed Petitions treat earned-wage transactions, that Proponents somehow can be
12 enjoined from proceeding with the gathering of signatures. Direct democracy in
13 Nevada does not work that way.

14 **B. Appropriate And Inappropriate Pre-Election Challenges To** 15 **Initiative Petitions**

16 Relatedly, certain kinds of arguments against initiative petitions are
17 foreclosed at the pre-election stage, because it is the policy of the State of Nevada to
18 permit petitions to be circulated and placed upon the general election ballot without
19 regard to their substance. *Herbst Gaming, Inc. v. Heller*, 141 P.3d 1224, 1228-31, 122
20 Nev. 877, 882-88 (2006). In other words, complaints by at least three of the Plaintiffs
21 that the provisions of the two Petitions do not comport with current law are not only
22 barred by the fact that Proponents are exercising legitimate legislative power in
23 proposing them, but also by the fact no Nevada court may inquire into the substance
24 of an initiative at this juncture in any event.

25 As the Nevada Supreme Court explained in *Herbst Gaming, Inc.*, only two
26 types of challenges to an initiative are appropriate for pre-election consideration:
27 (1) those based on an argument that the initiative did not meet the procedural
28 requirements for placing an initiative on the ballot, and (2) those based on a

1 contention that the subject matter is not appropriate for direct legislation under
2 constitutional or statutory limits on the initiative power. *Id.*, 122 Nev. at 883.
3 Challenges to the substance of a proposed initiative petition, however, are not ripe
4 for review at the pre-election stage. "[T]he substantive validity of an initiative should
5 be challenged if and when the initiative becomes law," because as the Court held,
6 there is "political utility in allowing the electorate to vote on a measure, even one
7 ultimately destined to fail on constitutional grounds." Substantive aspects of a
8 petition "are improperly considered before an initiative becomes law." *Herbini*
9 *Gaming, Inc.*, 122 Nev. at 889.

10 This is another way of saying Plaintiffs will have every opportunity not only to
11 present their substantive concerns to the voters of Nevada, but also to the Legislature
12 itself, both before and after these Petitions potentially become law. For the moment,
13 however, they are limited to attempting to demonstrate that the measures are clearly
14 invalid because they violate either the express procedural requirements for statutory
15 initiatives (i.e., the single-subject rule, or the description of effect requirement) or
16 that they are not lawful exercises of the people's initiative power (i.e., that they
17 contain unfunded mandates, or that they are not, in fact, legislative in nature at all).
18 These showings, however, they cannot make, so the balance of their arguments go to
19 their displeasure over the provisions of the Petitions of which they disapprove.

20 C. Neither Petition Violates The Single Subject Rule

21 Nevada law requires that any initiative petition "[e]mbrace but one subject and
22 matters necessarily connected therewith and pertaining thereto." NRS 295.009(1)(a).
23 "The single-subject requirement 'facilitates the initiative process by preventing
24 petition drafters from circulating confusing petitions that address multiple subjects.'"
25 *Hellon*, 512 P.3d at 314 (quoting *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*,
26 122 Nev. at 302).

27 Faced with a pre-election challenge brought pursuant to NRS 295.001
28 regarding a potential single-subject violation, there is a very specific analysis that

1 courts undertake, and performing it here, at the outset of this discussion, helps to cut
2 through the accumulated arguments of these multiple plaintiffs. "In considering
3 single-subject challenges, the court must first determine the initiative's purpose or
4 subject[.]" *Helton*, 512 P.3d at 314. "To determine the initiative's purpose or subject,"
5 courts "look[] to its textual language and the proponents' arguments," as well as
6 "whether the description of effect articulates an overarching purpose and explains
7 how provisions relate to a single subject." *Id.* (quoting *Las Vegas Taxpayer*
8 *Accountability Comm. v. City Council*, 125 Nev. 165, 180, 208 P.3d 420, 439 (2009)).
9 Once an initiative's single subject has been identified, courts must "then determine if
10 each provision is functionally related and germane to each other and the initiative's
11 purpose or subject." *Helton*, 512 P.3d at 314. Significantly, "even if an initiative
12 petition proposes more than one change to Nevada law, it may still meet the single-
13 subject requirement, provided that the proposed changes are functionally related and
14 germane to each other and a single subject." *Id.*, 512 P.3d at 312.

15 Historically, the Supreme Court has performed this analysis many times. In
16 the case of 2013's Margins Tax Initiative, the Court agreed with the proponents that
17 the measure's "primary purpose" was "to fund public education," and that its
18 components were related in an overall effort to achieve that purpose, sufficient to
19 satisfy any single-subject concern. *Educ. Initiative PAC*, 129 Nev. at 51. In 2022,
20 concerning the Better Voting Nevada Initiative, which "eliminated partisan
21 primaries *and* established an open top-five primary *and* a rank-choice voting general
22 election," the Court again agreed that, even despite two clearly different components,
23 the initiative's "single subject is the framework by which specified officeholders are
24 presented to voters and elected." *Helton*, 512 P.3d at 312 ("Although it proposes two
25 changes (open primary elections and ranked-choice general elections for specified
26 officeholders), both changes are functionally related and germane to each other and
27 the single subject of the framework by which specified officeholders are presented to
28

1 voters and elected.") See Description of Effect, Better Voting Nevada Initiative.⁴ (This
2 also puts paid to Nevadans for Financial Choice's argument that a mere "and" in a
3 description of effect is somehow indicative of multiple subjects: petitions commonly
4 have multiple components or aspects, and it is well established that the existence of
5 multiple provisions does not mean there is a single-subject violation. Nor does the
6 single-subject analysis depend on a hyper-technical scanning of the description for
7 conjoining words necessary to accurately describe the initiative.)

8 Here, in the case of these two Petitions, their primary purpose is an overall
9 program of *consumer debt relief*, and all components of the measures are functionally
10 related and germane to alleviating the worst effects of our modern culture of
11 consumer debt, especially the sort of debt that consumers take on due to pressing
12 immediate needs and which therefore permit lenders to take advantage of Nevada's
13 current lack of an interest rate cap. Relatedly, permitting Nevada consumers to
14 retain and protect more of their assets when debt collection threatens because the
15 spiral of one's debt and need has accelerated, will help Nevadans avoid some of the
16 issues that cause them to enter into debt. Petition #1 achieves this goal by protecting
17 a larger portion of wages from garnishment, or safeguarding \$5,000 in personal
18 savings rather than the paltry \$400 excepted currently. The overall program is clear
19 in its primary purpose and interconnected in its parts: limit consumer interest rates
20 on loans, as defined, to a still-generous 36%, and protect more assets when creditors
21 seek collection. In combination, these provisions provide consumers with an improved
22 framework of protections on both the front and back ends of the debtor experience.

23 The Petitions' text and description of effect both confirm the Petitions' primary
24

25
26 ⁴ The Better Voting Nevada Initiative is here attached as **Exhibit A** to this brief.
27 Its description of effect can be found at the top of pages 6 – 9. The entire petition is
28 worth referring to by the Court, as the decision in *Hellon* stands currently as the best
and most recent sustained discussion by the Nevada Supreme Court regarding its
single-subject and description of effect jurisprudence.

1 purpose. As the descriptions of effect explain, the Petitions "addresses high-interest
2 lending practices by establishing maximum interest rates charged to consumers, and
3 shields more of people's savings and earnings from garnishment than under current
4 law." See NFFC Amend. Compl., Ex. 1 (Petition #1), at 19; Ex. 2 (Petition #2) at 11.
5 The description of effect therefore "articulates an overarching purpose" that is neither
6 undermined nor contradicted by any of the Petition's other provisions. *Helton*, 512
7 P.3d at 314. This is a textbook example of the description supporting the primary
8 purpose of the Petitions generally.

9 According to the Plaintiffs' various and overheated arguments, a petition to
10 enshrine the "freedom of expression" would fail the single-subject rule on the ground
11 that it regulated such unrelated matters as journalism, books, films and movies,
12 poetry, visual arts, theater, and street-corner protests. The Nevada Supreme Court's
13 recent decision in *Helton* demonstrates that the Plaintiffs here are attempting to slice
14 matters far too thin in demanding that every aspect and subpart of each provision
15 relate directly to every aspect and subpart of all other provisions. Again, that is not
16 how direct democracy in Nevada functions. In *Helton*, the initiative's "single subject"
17 was "the framework by which specified officeholders are presented to voters and
18 elected." *Helton*, 512 P.3d at 314. That the provisions were separate (and arguably
19 independent) was not material to a single-subject analysis because the provisions had
20 a functional relationship to one another in achieving the purpose of the initiative
21 generally. Obviously, in *Helton*, each aspect of the new rules governing primary
22 elections did not relate directly to each aspect of the separate rules governing general
23 elections; the specific ranked-choice rules that would govern general elections, for
24 example, bore no direct relationship to the rules governing which party name would
25 be listed on a primary ballot next to a given candidate. See *id.* at 313. But that was
26 not how the Court approached the single-subject question, and instead focused on the
27 overall "policy changes" that the petition would have adopted, not the specific
28 implementation details, and it assessed whether the two policy changes involved

1 unrelated matters or a single framework. *Id.* at 314–15.

2 Adopting the *Helton* Court's approach, the case here is easy. It is not pertinent
3 to complain, as do almost all the Plaintiffs, that there are multiple kinds of
4 transactions that fall under the Petitions' 36% interest rate limit; instead, the Court's
5 orientation should be focused upon the consumer, from whose perspective a rate
6 limitation regardless of which of the types of transactions listed he or she enters into
7 with the types of companies represented by the Plaintiff group, the annual interest
8 rate will not lawfully exceed 36%. Furthermore, from the consumer's perspective the
9 expanded protections of their assets against collections is not some remote subject
10 unconnected to their debt predicament, but rather an important part of the fabric of
11 their fiscal well-being. It is immaterial whether industry lenders and interest groups
12 such as Plaintiffs might draw distinctions between an "earned-wage access provider"
13 and a "payday loan," or between lending practices and protections for consumers who
14 are in debt collection. Those Petitions have been proposed for the benefit of consumers
15 themselves, and from that vantage point the functional connections and germaneness
16 are clear.

17 As for multiple Plaintiffs' use of the buzzword *logrolling*, the opinion in *Helton*
18 was clear on that concern as well. The single-subject requirement "prevent[s] the
19 enactment of unpopular provisions by attaching them to more attractive proposals or
20 concealing them in lengthy, complex initiatives (i.e., logrolling)." *Helton*, 512 P.3d at
21 314 (quoting *Las Vegas Taxpayer Accountability Comm.*, 125 Nev. at 176–77).
22 "Logrolling" does not refer merely to the inclusion of multiple provisions in a single
23 petition, as Plaintiffs here suggest. Instead, it concerns "the inclusion of two distinct
24 changes in a single initiative petition," which in turn "forces the electorate to choose
25 between two potentially competing policy goals." *Helton*, 512 P.3d at 320 (Cadish, J.,
26 dissenting) (emphasis added); see also *Neundanz for the Prot. of Prop. Rights, Inc. v.*
27 *Heller*, 122 Nev. at 906 (single-subject requirement "prevent[s] proposals that would
28 not otherwise become law from being passed solely because they are attached to more

1 popular measures"); *id.* at 922 (Hardesty, J., concurring in part and dissenting in
2 part) (logrolling "occurs when two or more completely separate provisions are
3 combined in a petition, one or both of which would not obtain enough votes to pass
4 without the other" (emphasis added)).

5 None of these concerns is present here. Far from manifesting competing policy
6 goals, each provision of these Petitions furthers the overall program of alleviating the
7 experience of consumer debt. Nor, for that matter, does the Petition attempt to
8 surreptitiously enact a controversial proposal by pairing it with more popular
9 measures. See *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. at 922
10 (Hardesty, J., concurring in part and dissenting in part) ("Generally, to 'log-roll' a
11 provision into enactment, the proponent advances a proposition that the proponent
12 expects would pass constitutional muster and be easily enacted by the voters, but
13 then adds to the petition a provision, often 'hidden' deep within, that is less popular").
14 The Petition does not "try[] to hide an unrelated and unpopular change within the
15 initiative petition with the hope that the electorate decides the more popular change
16 is worth the adoption of the less popular one." *Hellon*, 512 P.3d at 315. It cannot be
17 persuasively argued that any of the provisions in the Petition overwhelm and
18 dominate in some manner as to drag hidden, unpopular provisions along with them
19 to the ballot, and no Plaintiff makes that claim anyway.

20 A few of Plaintiff's other specific single-subject concerns merit addressing
21 directly: Nevadans for Financial Choice, for example, argues that the range of types
22 of financial transactions indicates the presence of multiple subjects, because "these
23 distinct financial transactions are not functionally related and germane to each
24 other..." See NFFC Memorandum, at 6. As discussed above, this is an old canard in
25 ballot measure litigation. Nothing in law or the Nevada Supreme Court's
26 jurisprudence requires each provision of an initiative to be functionally related and
27 germane to each other; rather, they need only be functionally related and germane to
28 the initiative's overall policy goal. This argument is the equivalent of saying a ballot

1 measure proponent who wanted to cap interest rates would have to run ten or more
2 separate statutory initiatives, one covering every imaginable kind of transaction, that
3 interpretation and result is absurd.

4 DailyPay appears to argue that the Petitions violate the single-subject rule
5 because their terms apply to DailyPay at all. DailyPay Compl. ¶ 63. Putting that
6 argument in its best light, on behalf of DailyPay, what they are saying is that because
7 an existing statute, SB 290, exempts a service that DailyPay sells from the definition
8 of "loan," while the Petitions include that service under the definition of "loan,"
9 somehow this change in law creates an additional subject under NRS 295.009. But as
10 discussed above, that is simply an aspect of the policies embodied in the Petitions;
11 the Legislature defined their transactions one way through a Senate bill, and the
12 people are free to define them another way through direct legislation. This does not
13 result in an additional, impermissible subject under Nevada law, it is just the reality
14 of the Petitions' terms.

15 ActiveHours argues that there must be multiple subjects in these Petitions
16 because their terms would affect multiple chapters of the Nevada Revised Code. This,
17 too, is an old entry in the greatest hits of ballot measure opponents, and is contrary
18 to what the courts have held. As long as the primary purpose of a proposed petition
19 is identifiable, and as long as its components relate functionally to that primary
20 purpose, it matters not if the measure affects one or a hundred chapters of the NRS.
21 One would figure that if it was a commonplace that initiative petitions that affected
22 more than one NRS chapter were invalid on that basis, ActiveHours would be able to
23 point to a run of cases establishing that in Nevada. This state has an extremely active
24 ballot measure litigation culture, and a long history of judicial decisions on single
25 subject complaints stretching back to the enactment of NRS 295.009 in 2005 (and
26 even earlier, with common-law roots going back to *Stumpf v. Lau*, 108 Nev. 826, 830
27 P.2d 120 (1992), overruled by *Herbst Gaming, Inc.*, 122 Nev. 477). Yet ActiveHours
28 cannot point to such a case because that is not a legitimate basis for a finding of

multiple subjects: it is not even a factor mentioned by the Nevada Supreme Court in any of its single-subject analyses. If that Court wants to add that to its list of criteria, it is free to do so, but no direction to this Court has ever included that factor and no initiative petition has ever been struck down on that basis, because the test for determining compliance with the single-subject rule does not credit DailyPay's approach.

For their part, Preferred Capital claims to have located eleven separate subjects in the Petitions. See Pref. Cap. Compl., ¶ 25. Maybe even fifteen, it is not entirely clear, *Id.*, ¶ 30. While such zeal is admirable, it is not a credible analysis of these initiative proposals. Preferred Capital seems to be saying it would take fifteen separate ballot measures to achieve what Proponents seek here, but it appears those Plaintiffs have mistaken components of the Petitions for subjects under NRS 205.009. Even the version of their argument that attempts to differentiate between what they call the "catch-all" interest rate cap and the "specific" interest rate cap *are*, in fact, the same rate cap, under the same terms, applied to the types of transactions the Petitions target, and evinces no indication of impermissible multiple subjects.

In short, the analysis that the Nevada Supreme Court directs this Court to make—and which it will make itself in the inevitable appeal—establishes that both of the Petitions comply with Nevada's single-subject rule for initiative petitions.⁴

D. The Petitions' Descriptions Of Effect Are Wholly Adequate

A description of effect serves a specific and limited purpose. In no more than 200 words, it "facilitates the constitutional right to meaningfully engage in the initiative process by helping to prevent voter confusion and promote informed decisions." *Holton*, 512 P.3d at 316 (quoting *Las Vegas Taxpayer Accountability*

⁴ Obviously, it is also important for the Court to take notice that there are two separate petitions at issue in this litigation. While both Petitions comply with the single-subject rule, any distinction between them would need to parse specifically the arguments of Plaintiffs as to why either of them individually is non-compliant.

1 *Comm.*, 125 Nev. at 177). Here, the Petitions' descriptions do exactly that and
2 therefore satisfy the requirements of NRS 295.009(1)(b).

3 An initiative's description of effect "must be straightforward, succinct, and
4 nonargumentative, and it must not be deceptive or misleading," *Educ. Initiative PAC*
5 *v. Comm. to Protect Nev. Jobs*, 129 Nev. at 41 (internal quotation marks and citation
6 omitted). The purpose of the description of effect of an initiative is to inform
7 signatories to the initiative petition about the petition's subject; it does not serve as
8 the full, detailed explanation, including arguments for and against, that voters
9 receive prior to a general election. *Helton*, 512 P.3d at 317-18. Because the
10 description of effect of an initiative petition is limited to only 300 words, it cannot
11 constitutionally be required to delineate every effect that an initiative will have; to
12 conclude otherwise could obstruct, rather than facilitate, the people's right to the
13 initiative process. *Id.* Courts, of course, also "must make every effort to sustain and
14 preserve the people's constitutional right to amend their constitution through the
15 initiative process," which is "one of the basic powers enumerated in this state's
16 constitution," a charge that applies equally to the people's powers to propose statutory
17 initiatives *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. at 912
18 (quoting *Univ. & Cnty. Coll. Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 734,
19 100 P.3d 179, 195 (2004) (*per curiam*)).

20 The Nevada Supreme Court has extensively analyzed the legislative history
21 and intended purpose of the description requirement under NRS 295.009(1)(b) and
22 concluded that an "adequate" description makes a "legitimate effort to summarize
23 what [the proponent] believes to be the Initiative's main components," noting that
24 requiring petitions to describe "every detail or effect that an initiative may have . . .
25 would significantly hinder the people's power to legislate by initiative and effectively
26 bar all but the simplest of ballot measures." *Educ. Initiative PAC*, 129 Nev. at 42-50;
27 see also *id.* at 43.

28 Most ballot initiatives will have a number of different effects if enacted, many

1 of which are hypothetical in nature," and the Supreme Court has "previously rejected
2 the notion that a description of effect must explain 'hypothetical' effects." *Educ.*
3 *Initiative PAC*, 129 Nev. at 47 (quoting *Herbat Gaming, Inc.*, 122 Nev. at 889). This
4 is because:

5 [w]ith so few words in which to explain the effect of an initiative
6 or provision in an initiative petition the challenger feels is not
7 adequately addressed in the description of effect . . . [T]he
8 sufficiency of a description of effect depends not on whether someone
9 else could have written it better but instead on whether, as written,
it is "a straightforward, succinct, and nonargumentative summary of
what the initiative is designed to achieve and how it intends to reach
those goals.

10 *Helton*, 512 P.3d at 317-18 (footnote omitted) (quoting *Educ. Initiative PAC*, 129 Nev.
11 at 37); see also *Herbat Gaming, Inc.*, 122 Nev. at 889 ("A ballot measure's summary
12 and title need not be the best possible statement of a proposed measure's intent or
13 address every aspect of a proposal").

14 Here, the descriptions easily clear the legal bar. Their language is
15 straightforward, they are succinct, they are under 200 words, and there is no basis
16 for a finding of any argumentative language. Each description (and they are identical)
17 except for the portions that reflect the substantive text of the respective measures,
18 meaning Petition #1's description discusses the expanded asset protection
19 component, while Petition #2's omits that portion) proceeds, succinctly and with
20 admirable forthrightness, through (1) a general statement of the measure's purpose;
21 (2) a neutral and accurate statement of current law regarding interest rate
22 limitations; (3) a description of the transactions to which the proposed cap would
23 apply; (4) a statement of enforcement aspects of the proposal; and, in Petition #1 only,
24 a short description of the expanded asset protections against seizure for debts.

25 The test for sufficiency of a description of effect is not whether Plaintiffs are
26 satisfied, but rather have Proponents made good-faith efforts to describe the
27 measures proposed in ways that adequately inform the electorate in a brief space.
28 Keep in mind, as well, that signature collectors are required to carry the entire

1 Petition with them, so that signatories may read them in full at any time, and that
2 the circulators sign an affidavit under penalty of perjury attesting to those facts. See
3 NFEC Amend. Compl., Ex. 1 (Petition #1), at 24; Ex. 2 (Petition #2) at 16.
4 Furthermore, not only is the full text of both Petitions available on the website of the
5 Nevada Secretary of State, at <https://www.nvsos.gov/sos/elections/2024-petitions>, but
6 all Plaintiffs retain the freedom of speech and expression to mount whatever
7 opposition they have to these measures at the top of their lungs, over the airwaves,
8 and in any other medium available. The descriptions of effect appended to every
9 signature page of the Petitions, however, is real estate controlled by the Proponents,
10 and as long as they have not abused their prerogative—and here, they have not—
11 Plaintiffs' arguments amount to mere obstruction of Proponents' fundamental right.

12 In fact, the chorus of complaints by these Plaintiffs ends up proving the
13 sufficiency of the Petitions' descriptions. Four voices each of them demanding that
14 their circumstances or their specifically-preferred issues be highlighted in the
15 description, together demonstrating the impossibility of satisfying them all in 200
16 words. Their description-by-committee would end up informing potential signatories
17 and the electorate of very little, or overloading the description with unnecessary
18 material because one or other Plaintiff feels the effect on *their business only* is worthy
19 of inclusion. Simply put, they can flag all these individual issues themselves for
20 voters, at the appropriate time during the campaign. But this Court should consider
21 the descriptions of effect from the perspective of the voter: what would he or she want
22 to know about the terms of these Petitions in a 200-word statement? Is it some
23 confusing discussion on existing law, or rather that interest rates on amounts
24 financed will be capped at 36%? Is it more necessary to place a definition of "person"
25 or "consumer" in the description of effect, as DailyPay insists should have been done,
26 or rather, to alert Nevadans that if the initiative passes more of their assets will be
27 safe from garnishment and collection? See DailyPay Compl., ¶ 73.

28 Nevada case law is clear: "[I]t is inappropriate to parse the meanings of the

1 words and phrases used in a description of effect as closely as we would statutory
2 text." *Educ. Initiative PAC*, 129 Nev. at 48. Instead, courts "must determine whether
3 the description provides an expansive view of the initiative, rather than undertaking
4 a hyper-technical examination of whether the description covers each and every
5 aspect of the initiative" by examining "the meaning and purpose of each word and
6 phrase contained in the description." *Id.* at 49. It is exceedingly easy for

7 any opponent of a ballot initiative [to] identify some perceived effect
8 of an initiative that is not explained by the description of effect,
9 challenge the initiative in district court, and block the people's right
10 to the initiative process. *Statutes enacted to facilitate the initiative
11 process cannot be interpreted so strictly as to halt the process.*

12 *Educ. Initiative PAC*, 129 Nev. at 47 (emphasis added). Instead, what Nevada law
13 requires is a description that provides a "straightforward, succinct, and
14 nonargumentative summary of what the initiative is designed to achieve and how it
15 intends to reach those goals." *Helson*, 512 P.3d at 316. Nothing more is required, and
16 the Petitioners' descriptions of effect readily comply here.

17 The collection of arguments mounted by these Plaintiffs as to why the
18 descriptions are invalid read, essentially, as a laundry list of how their preferred
19 language or issue is not included. These arguments are made less compelling by
20 reasons of space and the need to prioritize, but also tend to cancel one another out.
21 Talk about covered wage access, says one; no, we must have more on obligation
22 funding, says another. But a few of the claims do deserve specific attention, as they
23 did in the single-subject section.

24 Preferred Capital complains that the heading of the initiative petition, entitled
25 "Initiative Petition – Statewide Statutory Measure," "fails to provide voters with any
26 idea regarding the subject matter or potential effect of the Petition. Pref. Cap.
27 Compl., ¶ 42. But this title is a convention, the same one used on every statutory
28 initiative, constitutional initiative, and referendum in Nevada for decades. See
29 "Historical Information," <https://www.nvscs.gov/eas/elections/initiatives-referenda>,
30 for examples of each filed measure going back to at least 2006. It is not intended, nor

1 is it required, to inform anyone of anything other than what it is, a statewide
2 statutory initiative petition. Neither is the header part of the 200-word description of
3 effect.

4 Preferred Capital goes on to argue that where the descriptions state "most
5 consumer loans have no interest rate cap," this is somehow misleading. But this is
6 objectively and obviously true in Nevada, and no one plausibly can say otherwise. The
7 description does not say, as Preferred Capital infers, that most consumer loans are
8 wholly unregulated. Pref. Cap. Compl., ¶ 44. That most consumer loans have no
9 interest rate cap may be an uncomfortable truth for some of these Plaintiffs, but it is
10 not in any respect a falsehood. This Plaintiff goes on to argue that the descriptions do
11 not explain that the terms of the Petitions "will likely require lenders to modify other
12 terms of their transactions or require lenders to cease providing certain products to
13 consumers." *Id.* But this would be both hypothetical and argumentative, and as
14 already noted the Nevada Supreme Court has "previously rejected the notion that a
15 description of effect must explain hypothetical effects." *Educ. Initiative PAC*, 129
16 Nev. at 47. Plaintiffs are perfectly free to describe what they believe will be the
17 impacts of these Petitions upon their business models in their oppositions to their
18 enactment; they are not free to demand Proponents perform that political function
19 for them, where the current descriptions are accurate and provided in good faith.

20 Both ActiveHours and DailyPay argue some version of the line that the
21 descriptions are "deceptive and misleading in that [they] conspicuously omit any
22 reference to SB 290 or Earned Wage Access services..." DailyPay Compl. ¶ 70. But
23 again, any opponent of a filed ballot measure petition could argue that *their* specific
24 concerns should be addressed in the descriptions. Pretty soon, however, 200 words
25 have been consumed solely by every Plaintiffs' personal agendas, regarding a
26 legislative act meant to regulate generally; this is not the function of a description of
27 effect. Let us be entirely frank: the descriptions of effect do not exist to convey what
28 DailyPay fears may happen to their business model; it exists to inform the electorate

1 that the Petitions will cap annual interest rates on the most common financial
2 transactions at 36% and will protect more of their assets should they face collection
3 proceedings. It is the actual effect on consumers' lives, not the hypothetical effects on
4 ActiveHours, that the descriptions are required to address.

5 Nevadans for Financial Choice raise two arguments that sound meaningful
6 until you scratch them the slightest bit. First, they claim Proponents ought to be
7 made to describe that "a whole host of [protected asset] exemptions that currently
8 exist under NRS 21.105 ... are deleted" by the Petitions. NFFC Memorandum, at 8.
9 It may be that this Plaintiff is unclear how asset-protection exemptions work under
10 law, but in fact Petition #1 just increases existing protections, makes clear that
11 independent contractors' earnings are also protected, and indexes those protections
12 to inflation. The new protections multiply and subsume the former, smaller ones, they
13 do not *remove* protections. In other words, for example, if existing wage or bank
14 account protections are quadrupled or quintupled, and are also made self-executing
15 rather than having to be applied for and itemized as they are currently, consumer
16 protections have massively increased. In that context, demanding that the "deletion"
17 of current provisions reflecting the paltry current protections be described is really a
18 demand to confuse rather than inform the electorate.

19 Similarly, Nevadans for Financial Choice argues that Proponents should
20 "identify how the Initiative would constitute an election out of the federal "Depository
21 Institution Deregulation and Monetary Control Act of 1980" ("DIDMCA")" *Id.* But
22 the Petition's description actually does do this. The entire portions of the descriptions
23 regarding how they "prohibit evading the interest rate cap" is devoted to this
24 specifically, and includes reference to the Petitions' enforcement mechanisms.⁵

25
26 ⁵ Beginning in the 1990s, certain unscrupulous lenders started to partner with
27 state-chartered banks, in a practice known as "rent-a-bank," to evade interest rate
28 caps by routing loans through banks chartered out of state that can "export" the
interest rate of their home state to borrowers in other states. Section 14 of the

1 In general, Plaintiffs nibble at the portions of the description they would have
2 tailored for themselves, or which would include confusing and potentially misleading
3 text. The test, as this Court knows, is not whether Plaintiffs would write the
4 descriptions differently—any 100 people would produce 100 different descriptions,
5 obviously—but rather have the Proponents of these Petitions misled, or deceived, or
6 failed to describe the essence of the policy proposal and its major effects, within the
7 constraints of a 200-word space. It cannot fairly be said that they have done any of
8 those things here, and the descriptions should be found valid by the Court.

9 E. Unfunded Mandate

10 Article 19, Section 6 of the Nevada Constitution, an initiative is prohibited if
11 it “makes an appropriation or otherwise requires the expenditure of money” without
12 providing for raising the necessary revenue. Nev. Const. art. 19, § 6. “Stated
13 differently, an initiative makes an appropriation or expenditure when it leaves
14 budgeting officials no discretion in appropriating or expending the money mandated
15 by the initiative—the budgeting official must approve the appropriation or
16 expenditure, regardless of any other financial considerations.” *Herbst Gaming, Inc.*,
17 122 Nev. at 890; *see also Edits. Freedom PAC v. Reid*, 512 P.3d at 303. The policy
18 behind this requirement is to “prevent[] the electorate from creating the deficit that
19

20
21 Petitions ensures that these lenders will not be able to use rent-a-bank schemes to
22 evade the proposed rate cap by opting Nevada out of the federal statute, the
23 Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA),
24 that allows out-of-state banks to “export” their interest rate to Nevada consumers.
25 Similarly, Section 11 of the Petitions also combats rent-a-bank by making any lender
26 whose business model is routing loans through an out-of-state bank subject to the
27 initiative’s rate cap. Both provisions are closely tied to the purposes of the rate cap
28 itself because they ensure that it cannot be evaded. *See* <https://oag.ca.gov/news/press-releases/attorney-general-bonta-predatory-lending-and-illegal-rent-a-bank-schemes-have-no> (last accessed Feb. 24, 2024), for a statement by the Office of the California Attorney General regarding DIDMCA and the proliferation of rent-a-bank schemes to evade state regulation.

1 would result if government officials were forced to set aside or pay money without
2 generating the funds to do so." *Herbst Gaming, Inc.*, 122 Nev. at 891.

3 Here, the Petitions "leave the mechanics of [their] enforcement with
4 government officials," which means the Petitions need not include a revenue-raiser.
5 *Herbst Gaming, Inc.*, 122 Nev. at 891. The Petitions do not require specific
6 enforcement procedures, which is key to whether they are required to identify a
7 revenue source. In *Herbst*, which concerned a statewide indoor smoking ban, the
8 Court recognized that a petition that "merely expands the statutorily delineated
9 areas within which one may be subject to criminal and civil penalties for smoking"
10 did not contain an unfunded mandate because it did not "compel an increase or
11 reallocation of police officers to enforce its provisions." *Id.*, 122 Nev. at 891. Such is
12 the case here. It makes no sense to conclude that hypothetical enforcement and
13 regulation associated with violation of the provisions of these Petitions expenditures
14 would increase expenditures.

15 The unfunded mandate argument is only pursued by DailyPay. It has a heavy
16 burden to establish that the measure[s] are invalid for causing an expenditure or an
17 appropriation, and DailyPay does nothing to achieve that. It merely argues that the
18 petition would increase regulation (it actually argues it would increase exposure to
19 increased regulation and enforcement for DailyPay itself, not for the general public)
20 and would cause some imprecise and vaguely-identified increase in expenditures, but
21 never explains that concept. The issue that SB 290 carried fiscal costs due to
22 application and licensure costs when it was enacted in 2023[7] is irrelevant; neither
23 of the Petitions here have any provisions affecting the licensure of DailyPay or their
24 colleagues.

25 DailyPay's argument is essentially the classic criminal-law red herring: any
26 new criminal law necessarily will increase police activity, which presumably would
27 cost more money. But police, like financial regulators, will be on the job anyway,
28 enforcing the law as it is written. No new agencies or taskforces are created by the

1 Petitions, and they can be fully implemented without the need for any appropriated
2 funding—a conclusion amply supported by the record, which contains no evidence to
3 the contrary.

4 Compare this with the situation in *Hellon*, in which the initiative proposed to
5 alter completely the election procedures throughout the state of Nevada, requiring
6 new ballot systems, new tabulation machines, and programs, which one could
7 surmise would cost the State serious money. But the Nevada Supreme Court found
8 that plaintiff there failed to establish that proposed ballot initiative, which sought to
9 amend the Nevada Constitution to implement open primary elections and ranked-
10 choice general elections for specified officeholders, would require an appropriation or
11 the expenditure of money" and that while plaintiff "offered some references to the
12 expected costs to implement similar changes in other places, he did not provide any
13 evidence regarding the expected costs to make the proposed changes to the Nevada
14 election system." *Hellon*, 512 P.3d at 318. DailyPay's unfunded mandate argument
15 does not persuade.

16 F. The Full-Text Requirement

17 Under Article 19, Section 3 of the Nevada Constitution, Petitioners must
18 "include the full text of the measure proposed" with their petition. Nev. Const. art.
19 19, § 3. DailyPay and Nevadans for Financial Choice make "full-text" arguments
20 against both Petitions, claiming without authority that some other text than the text
21 that Proponents are proposing should be included in them.

22 DailyPay, for its part, argues that the entirety of SB 290 must be appended to
23 these Petitions, because otherwise "a potential signer has no meaningful way of
24 knowing the context of the proposed Act's reference to SB 290..." DailyPay
25 Compl. ¶ 83. Nevadans for Financial Choice claims that the Petitions actually have to
26 include the text of every other Nevada statute with which their provisions may
27 interact or conflict. But these are absurd readings of Article 19, Section 3's
28 requirements, and would make initiative petitions ridiculously long, unnecessarily

1 complex, and incredibly burdensome to propose. Any opponent could claim that the
2 provisions of a petition interact with some statute, and demand it be included in the
3 petition packet. In the case of DailyPay, it is not even mere statutes that they demand
4 be included, because SB 290 appears to have enacted 30 new statutes. Preferred
5 Capital could demand that all of NRS Chapter 604C be included. Every financial
6 interest in the state could claim the same.

7 Here, the Petitions contain every provision that is proposed to be circulated for
8 signatures and considered by the electorate.

9 This would be a novel and extremely dangerous ground upon which to
10 invalidate a proposed initiative measure, and one for which there is absolutely no case
11 authority in this state. In fact, the only mention of the "full-text" requirement in any
12 Nevada Supreme Court case came in the unpublished case of *Coalition for Nevada's
13 Future v. RIP Com. Tax, Inc.*, 132 Nev. 956 (2016) (unpublished disposition), in dicta,
14 when it noted that "the Nevada Constitution requires no particular form for a
15 referendum petition, except that it include the full text of the proposed measure, as
16 this petition does." *Id.* By "this petition," the Court in *Coalition for Nevada's Future*
17 was referring to a referendum petition that included only 73 of the referred bill's 114
18 sections, so by the Supreme Court's own lights so far Plaintiffs' interpretation is an
19 unlikely one. In fact, no filed ballot measure petition in Nevada history has been held
20 to such an implausible standard. Most recently, 2022's Better Voting Nevada
21 Initiative, at issue in *Holton*, would cause the immediate repeal of dozens of election
22 laws; its petition text included none of them, and its description mentioned none,
23 either.

24 If the Nevada Supreme Court wishes to interpret Article 19, Section 3 in the
25 cumbersome atextual fashion urged by DailyPay and Nevadans for Financial Choice,
26 it certainly may say so. This Court, however, should not be entertaining a break with
27 historical jurisprudence that would strike down a lawfully-proposed initiative
28 petition. Both these Petitions contain their "full text," within the meaning of the

1 Nevada Constitution, already, and Plaintiffs' versions would place an obstacle in the
2 path of the exercise of Proponents' constitutional rights to popularly propose
3 legislation that is not warranted by any case or interpretation heretofore produced.

4 G. Initiative Versus Referendum

5 DailyPay further argues that these two Petitions are not really initiatives at
6 all, but rather are referenda of SB 290. This really does not make much sense. As an
7 initial matter, initiative proponents—like plaintiffs in any civil suit—are masters of
8 their petitions. In other words, as far as the law is concerned, if there is any question
9 regarding the character of the Petitions, they are exactly what Proponents say they
10 are: statutory initiatives. Thankfully, the controversy is fabricated; there is no
11 legitimate question about the Petitions' character, because they establish new
12 statutory chapters and amend others, which are legislative acts only statutory
13 initiatives can achieve in Nevada. "Initiative is that power reserved to the people to
14 propose new laws and referendum gives them the power to veto those laws passed by
15 their representatives ..." *Forman v. Eagle Thrifty Drugs & Markets, Inc.*, 89 Nev. 533,
16 537, 516 P.2d 1234, 1236 (1973), overruled on other grounds by *Gorvin v. Ninth Jud.*
17 *Dist. Ct. ex rel. Cnty. of Douglas*, 118 Nev. 749, 59 P.3d 1180 (2002).

18 These Petitions do not change a single word of SB 290, but instead deal with
19 issues upon which that bill is silent: interest rate caps for financing consumer
20 transactions. There is no authority for construing an initiative as a referendum just
21 because it may have some impact on existing statutes; most new laws do have some
22 such impact.

23 ///

24 //

25 //

26 //

27 //

1 **V. CONCLUSION**

2 Based upon the foregoing, Proponents ask this Court to reject the various
3 challenges to the Petitions' legal sufficiency, and to award no relief to Plaintiffs in
4 this action.

5 **AFFIRMATION**

6 The undersigned hereby affirm that the foregoing document does not contain
7 the social security number of any person.

8
9 DATED this 28th day of February, 2024.

10 **BRAVO SCHRAGER LLP**

11
12 By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February, 2024, I served the foregoing
**DEFENDANTS KATE FELDMAN'S AND STOP PREDATORY
LENDING NV'S OMNIBUS RESPONSE** via electronic mail, per the February 22,
2024, Stipulation and Scheduling Order of the Court, as follows:

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By: 
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EXHIBIT A

EXHIBIT A

NOTICE OF INTENT TO CIRCULATE STATEWIDE INITIATIVE OR REFERENDUM PETITION

received
11-12-2017

State of Nevada



Secretary of State Barbara K. Cegavske

Pursuant to NRS 295.015, before a petition for initiative or referendum may be presented to registered voters for signatures, the person who intends to circulate the petition must provide the following information:

NAME OF PERSON FILING THE PETITION

Todd L. Bice

NAME(S) OF PERSON(S) AUTHORIZED TO WITHDRAW OR AMEND THE PETITION (provide up to three)

1. Todd L. Bice

2.

3.

NAME OF THE POLITICAL ACTION COMMITTEE (PAC) ADVOCATING FOR THE PASSAGE OF THE INITIATIVE OR REFERENDUM (if none, leave blank)

Nevada Voters First

Please note, if you are creating a Political Action Committee for the purpose of advocating for the passage of the initiative or referendum, you must complete a separate PAC registration form.

Additionally, a copy of the initiative or referendum, including the description of effect, must be filed with the Secretary of State's office at the time you submit this form.

X

Signature of Petition Filer

Date

11-12-2017

BETTER VOTING NEVADA INITIATIVE

EXPLANATION: Matter in bolded italics is new; matter between brackets (~~omitted material~~) is material to be omitted.

The People of the State of Nevada do enact as follows:

Section 1. Article 5, Section 4 of the Nevada Constitution is hereby amended to read as follows:

Section 4. Returns of general election transmitted to secretary of state; canvass by supreme court; declaration of election. The returns of every election for United States senator and member of Congress, district and state officers, and for and against any questions submitted to the electors of the State of Nevada, voted for at the general election, shall be sealed up and transmitted to the seat of government, directed to the secretary of state, and the chief justice of the supreme court, and the associate justices, or a majority thereof, shall meet at the office of the secretary of state, on a day to be fixed by law, and open and canvass the election returns for United States senator and member of Congress, district and state officers, and for and against any questions submitted to the electors of the State of Nevada, and forthwith declare the result and publish the names of the persons elected and the results of the vote cast upon any question submitted to the electors of the State of Nevada. The persons having the highest number of votes for the respective offices *as provided for and governed by Nevada law and/or Section 18 of Article 15 of this Constitution* shall be declared elected. [~~but in case any two or more have an equal and the highest number of votes for the same office, the legislature shall, by joint vote of both houses, elect one of said persons to fill said office.~~]

Section 2. Article 15, Section 14 of the Nevada Constitution is hereby amended to read as follows:

Sec: 14. Election by plurality. A plurality of votes given at an election by the people, shall constitute a choice, *except as provided in Section 18 of Article 15 or where not otherwise provided by this Constitution.*

Section 3. Article 15 of the Nevada Constitution is hereby amended by adding thereto a new section to be designated as Section 17, to read as follows:

Section 17. Top-five primary elections for partisan office.

1. Primary elections for partisan office shall be conducted as follows:

- a. The primary election for partisan offices must be held on the date and time as provided by Nevada law.*
- b. A person may become a candidate at the primary election for partisan office regardless of the person's affiliation with a political party, or lack thereof.*

- c. Any registered voter may cast a primary ballot for any candidate for partisan office regardless of the political party affiliation of the voter or any political party preference indicated by the candidate. The primary election for partisan office does not serve to determine the nominee of a political party or political group but serves only to narrow the number of candidates whose names will appear on the ballot at the general election for partisan office.
2. At a primary election for partisan office, only the names of the five candidates receiving the greatest number of votes at the primary election shall advance to the general election for partisan office. If, however, there are five or fewer candidates for a specific partisan office, the primary election for partisan office will still be held and the results made public, and all must be declared the candidates for the general election.
3. In the event of a tie for fifth place, the candidate who proceeds to the general election for partisan office will be decided by lot.
4. The ballot for the primary election must clearly delineate the partisan offices to which the top-five process provided by this section applies.
5. Immediately following the name of each candidate for a partisan office must appear the name or abbreviation of the political party with which the candidate is registered, the words "no political party" or the abbreviation "NPP," as the case may be.
6. The ballots for the primary elections for partisan office must include a conspicuously placed statement: "A candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."
7. In the event that one of the five candidates who received the greatest number of votes at the primary election withdraws, is disqualified, dies, or is otherwise deemed ineligible to be elected after the primary election for partisan office but before the 5 p.m. on the fourth Friday in July, the candidate receiving the next greatest number of votes at the primary election for partisan office shall be declared a nominee, and his or her name shall be placed on the ballot at the general election for partisan office.
8. As used in this section:
"Partisan office" means the Offices of United States Senator, United States Representative, Governor, Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, State Controller, and State Legislators, and excludes the Offices of President of the United States and Vice President of the United States.

9. Implementation

- a. Not later than July 1, 2025, the Legislature shall provide by law for provisions consistent with Section 17 of Article 15 of this Constitution to require top-five primary elections for partisan office.
- b. Upon enactment of any law by the Legislature pursuant to Section 17 of Article 15 of this Constitution before July 1, 2025, and not later than that date, any laws, regulations, regulatory orders or other provisions which conflict with Section 17 of Article 15 of this Constitution will be void. However, the Legislature may enact legislation, in whole or in part, consistent with Section 17 of Article 15 of this Constitution that to provide top-five primary elections for partisan office before July 1, 2025.

Section 4. Article 15 of the Nevada Constitution is hereby amended by adding thereto a new section to be designated as Section 18, to read as follows:

Section 18. Ranked-choice voting for general elections for partisan office.

1. All general elections for partisan office shall be conducted by ranked-choice voting.
2. The general election ballots for partisan office shall be designed so that the candidates are selected by ranked-choice voting.
3. The general election ballots for partisan office shall be designed so that the voter is directed to mark candidates in order of preference and to mark as many choices as the voter wishes, but not to assign the same ranking to more than one candidate for the same office.
4. Immediately following the name of each candidate for a partisan office must appear the name or abbreviation the political party with which the candidate is registered, the words "no political party" or the abbreviation "NPP," as the case may be.
5. The ballots for the general elections for partisan office must include a conspicuously placed statement that: "Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."
6. When counting ballots in a general election for partisan office, the Registrar, County Clerk, or chief election official (as applicable) in each County shall initially tabulate each validly cast ballot as one vote for the highest-ranked candidate on that ballot or as an inactive ballot. If a candidate is highest-ranked on a majority of the active ballots, that candidate is elected and the tabulation is complete. If no candidate is highest-ranked on a majority of the active ballots, tabulation proceeds in sequential rounds as outlined in Section 7.
7. Tabulation proceeds in sequential rounds as follows:
 - a. If two or fewer continuing candidates remain, the candidate with the greatest number of votes is elected and the tabulation is complete; otherwise, the tabulation continues under (b) of this subsection.

- b. The candidate with the fewest votes is eliminated; votes cast for the eliminated candidate shall cease counting for the eliminated candidate and shall be added to the totals of each ballot's next-highest-ranked continuing candidate or considered an inactive ballot under (8)(b) and (8)(c) of this section, and a new round begins under (7)(a) of this subsection.
8. When counting general election ballots for partisan office,
 - a. A voter may choose to rank just one candidate for partisan office, and that vote will be tabulated.
 - b. A ballot containing an overvote shall be considered an inactive ballot once the overvote is encountered at the highest ranking for a continuing candidate.
 - c. If a ballot skips a ranking, then the election board shall count the next ranking. If the next ranking is another skipped ranking, the ballot shall be considered an inactive ballot for that race.
 - d. Any votes for "None of These Candidates" shall be tabulated, recorded, and made public, but not be counted for the purpose of electing or ranking any candidates for partisan office.
 - e. In the event of a tie between the final two continuing candidates, the winner shall be decided in a manner as provided by statute.
 - f. In the event of a tie between two candidates with the fewest votes, the candidate eliminated shall be decided by lot.
 - g. An inactive ballot may not be counted for any candidate in that particular race.
9. As used in this section:
 - a. "Continuing candidate" means a candidate who has not been eliminated.
 - b. "Inactive ballot" means a ballot that is no longer tabulated, either in whole or in part, because it does not rank any continuing candidate, contains an overvote at the highest continuing ranking, or contains two or more sequential skipped rankings before its highest continuing ranking.
 - c. "Overvote" means an instance where a voter has assigned the same ranking to more than one candidate.
 - d. "Ranking" or "ranked" means the number assigned by a voter to a candidate to express the voter's choice for that candidate; a ranking of "1" is the highest ranking, followed by "2," and then "3," and so on.
 - e. "Round" means an instance of the sequence of voting tabulation in a general election for partisan office.
 - f. "Skipped ranking" means a blank ranking on a ballot on which a voter has ranked another candidate at a subsequent ranking.
 - g. "Partisan office" means the Offices of United States Senator, United States Representative, Governor, Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, State Controller, and State Legislators, and excludes the Offices of President of the United States and Vice President of the United States.

10. *Completion of ballot count; certificate.*

- a. *The certification of results shall be conducted as provided by Nevada law.*

11. *Implementation*

- a. *Not later than July 1, 2025, the Legislature shall provide by law for provisions consistent with this constitutional amendment, including providing for disclosure as to the full ranking of each candidate.*
- b. *Upon enactment of any law by the Legislature pursuant to this constitutional amendment before July 1, 2025, and not later than that date, any laws, regulations, regulatory orders or other provisions which conflict with this constitutional amendment will be void. However, the Legislature may enact legislation, in whole or in part, consistent with this constitutional amendment before July 1, 2025.*

Section 5. Severability. If any provision of this act, or the application therefore to any person, thing or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this act as a whole or any provision or application of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are declared to be severable.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

DESCRIPTION OF EFFECT

If enacted, this initiative changes Articles 5 and 15 of Nevada's Constitution for Congressional, Governor, Lieutenant Governor, Attorney General, Secretary of State, Treasurer, Controller and State Legislator elections, eliminating partisan primaries and establishing an open top-five primary election and a rank-choice voting general election.

For these offices, all candidates and voters participate in a single primary election regardless of party affiliation or non-affiliation. The top five finishers advance to the general election, and the general election winner is determined by rank-choice voting:

- General election voters rank the candidates in order of preference from first to last, if they wish to rank more than their first preference.
- As traditionally, a candidate receiving first-choice votes of more than 50% wins.
- If no candidate is the first choice of more than 50%, the candidate with the fewest votes is eliminated. And each voter who had ranked the now-eliminated candidate as their first choice, has their single vote transferred to their next highest choice candidate.
- This tabulation process repeats until the one candidate with more than 50% support is determined as the winner.

The Legislature must adopt implementing legislation by July 1, 2025.

County of _____
Petition District: _____

(Only registered voters of this county may sign below)
(Only registered voters of this petition district may sign below)

This Space for
Office Use Only

1	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE <u> / / </u>	CITY _____	COUNTY _____	PETITION DISTRICT _____
2	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE <u> / / </u>	CITY _____	COUNTY _____	PETITION DISTRICT _____
3	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE <u> / / </u>	CITY _____	COUNTY _____	PETITION DISTRICT _____
4	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE <u> / / </u>	CITY _____	COUNTY _____	PETITION DISTRICT _____
5	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE <u> / / </u>	CITY _____	COUNTY _____	PETITION DISTRICT _____

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	YOUR SIGNATURE _____ DATE ____/____/____	CITY _____ COUNTY _____ PETITION DISTRICT _____	
8	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE _____ DATE ____/____/____	CITY _____ COUNTY _____ PETITION DISTRICT _____	
9	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE _____ DATE ____/____/____	CITY _____ COUNTY _____ PETITION DISTRICT _____	
10	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY	
	YOUR SIGNATURE _____ DATE ____/____/____	CITY _____ COUNTY _____ PETITION DISTRICT _____	

DESCRIPTION OF EFFECT

If enacted, this initiative changes Articles 5 and 13 of Nevada's Constitution for Congressional, Governor, Lieutenant Governor, Attorney General, Secretary of State, Treasurer, Controller and State Legislator elections, eliminating partisan primaries and establishing an open top-five primary election and a rank-choice voting general election.

For these offices, all candidates and voters participate in a single primary election regardless of party affiliation or non-affiliation. The top five finishers advance to the general election, and the general election winner is determined by rank-choice voting.

- General election voters rank the candidates in order of preference from first to last, if they wish to rank more than their first preference.
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- This tabulation process repeats until the one candidate with more than 50% support is determined as the winner.

The Legislature must adopt implementing legislation by July 1, 2025.

County of _____
Petition District: _____

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Office Use Only

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12	PRINT YOUR NAME (first name, middle, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE _____	CITY _____	COUNTY _____	PETITION DISTRICT _____
13	PRINT YOUR NAME (first name, middle, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE _____	CITY _____	COUNTY _____	PETITION DISTRICT _____
14	PRINT YOUR NAME (first name, middle, last name)	RESIDENCE ADDRESS ONLY		
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15	PRINT YOUR NAME (first name, middle, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE _____	CITY _____	COUNTY _____	PETITION DISTRICT _____

DESCRIPTION OF EFFECT

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The Legislature must adopt implementing legislation by July 1, 2025.

County of _____
 Petition District: _____

(Only registered voters of this county may sign below)

(Only registered voters of this petition district may sign below)

Not Spaced
 Office Use Only

16	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE _____	CITY _____	COUNTY _____	PETITION DISTRICT _____
17	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE _____	CITY _____	COUNTY _____	PETITION DISTRICT _____
18	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE _____	CITY _____	COUNTY _____	PETITION DISTRICT _____
19	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE _____	CITY _____	COUNTY _____	PETITION DISTRICT _____
20	PRINT YOUR NAME (first name, initial, last name)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE _____ DATE _____	CITY _____	COUNTY _____	PETITION DISTRICT _____

THE FOLLOWING AFFIDAVIT MUST BE COMPLETED AND SIGNED:

AFFIDAVIT OF CIRCULATOR
(TO BE SIGNED BY CIRCULATOR)

STATE OF NEVADA)
)
County of _____)

I, _____, (print name), being first duly sworn under penalty of perjury, depose and say:
(1) that I reside at _____ (print street, city
and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures
were affixed in my presence; (5) that the number of signatures affixed thereon is _____; and (6) that each
person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative
or referendum is demanded.

Signature of Circulator

Subscribed and sworn to or affirmed before me this

_____ day of _____, _____, by _____

Notary Public or person authorized to administer oath

COPY

2024-03-04 PM 4:34

D. ORTIZ

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Attorneys for Plaintiffs Activehours, Inc.
and Stacy Press

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

NEVADANS FOR FINANCIAL CHOICE,
a Nevada Political Action Committee, and
CHRISTINA BAUER, an individual,

Case No. 24 OC 00018 1B

Dept. No. II

Plaintiffs,

vs.

Consolidated with

KATE FELDMAN, an individual, STOP
PREDATORY LENDING NV, a Nevada
Nonprofit Corp., and FRANCISCO V.
AGUILAR, in his official capacity as
Nevada Secretary of State,

Case No. 24 OC 00021 1B

Dept. No. II

Case No. 24 OC 00023 1B

Dept. No. I

Defendants.

Case No. 24 OC 00029 1B

Dept. No. I

DAILYPAY, INC., a Delaware Corporation,

Plaintiff,

vs.

FRANCISCO V. AGUILAR, in his official
capacity as NEVADA SECRETARY OF
STATE,

Defendant,

and

STOP PREDATORY LENDING NV, a
Nevada Nonprofit Corp., and KATE
FELDMAN, an individual,

Intervenor-Defendants.

1 PREFERRED CAPITAL FUNDING
2 NEVADA, LLC, a Nevada limited liability
3 company, and ALLIANCE FOR
RESPONSIBLE CONSUMER LEGAL
FUNDING, an Illinois nonprofit corporation,

4 Plaintiffs,

5 vs.

6 FRANCISCO V. AGUILAR, in his official
capacity as NEVADA SECRETARY OF
STATE, and KATE FELDMAN, an
individual,

7 Defendants,

8 And

9 STOP PREDATORY LENDING NV, a
Nevada Nonprofit Corp.,

10
11 Intervenor-Defendant.

12 ACTIVEHOURS, INC., a Delaware
corporation; STACY PRESS, an individual,

13 Plaintiffs,

14 vs.

15 KATE FELDMAN, an individual, STOP
PREDATORY LENDING NV, a Nevada
Nonprofit Corp., and FRANCISCO V.
AGUILAR, in his official capacity as
Nevada Secretary of State,

16
17 Defendants.

18 **ACTIVEHOURS, INC.'S AND STACY PRESS'S REPLY IN SUPPORT OF THEIR**
19 **BRIEF IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE**
20 **RELIEF CHALLENGING INITIATIVE PETITION S-03-2024**

21 Plaintiffs Activehours, Inc., and Stacy Press (collectively referred to as
22 "Activehours"), file this Reply in response to Defendants/Intervenors Kate Feldman's and Stop
23 Predatory Lending NV's Omnibus Response ("Omnibus Response") and in support of their Brief
24 in Support of Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition S-
03-2024.

1 **I. INTRODUCTION**

2 While the initiative power is an important one, proponents of an initiative must
3 abide by the statutory requirements placed upon the initiative process. Those requirements,
4 including the single subject rule and providing a description of effect that is not misleading, help
5 to ensure the integrity of the initiative process. Here, proposed Initiative Petition S-03-2024 (the
6 (the “Initiative”) is deficient because it violates the single subject rule and offers a misleading
7 description of effect.

8 Through its text and description of effect, the Initiative’s overall purpose proclaims
9 to be “combatting predatory payday lending” and “addressing high-interest lending practices.”
10 However, after Plaintiffs asserted the Initiative violated the single subject rule through those stated
11 purposes, Petitioners/Defendants now argue their purpose is something else entirely. In order to
12 ensure each and every disparate part of the Initiative fits within one overarching goal, Petitioners
13 part ways with the text of the Initiative itself and claim the purpose of *consumer debt relief*. Of
14 course, any stated purpose, if broad enough, can encompass an array of topics, no matter how
15 unrelated they may be. But Petitioners cannot escape the single subject rule simply by self-
16 declaring a purpose so general and broad that virtually any aspect of life could fall within its
17 purview. Therefore, their attempt to force the numerous subjects they address in their Initiative
18 into one broad purpose is insufficient to meet NRS 295.009’s single subject rule. The purpose of
19 that rule—standard across more than a dozen states in the United States—is to promote clarity,
20 avoid deception and confusion, and avoid perverse results.

21 Similarly, because the Initiative deals with more than a single subject, its
22 description of effect is misleading as it fails to fully inform voters of the effects and consequences
23 of the Initiative. The description of effect tells voters the Initiative will impact and regulate “high-
24 interest lending practices.” However, the Initiative seeks to regulate activities (subjects) that are

1 neither high-interest loans, nor services that are loans as a matter of law. As a result, a voter's
2 ability to make an informed decision on whether to support the Initiative will be compromised,
3 thereby rendering the description of effect inadequate.

4 II. ARGUMENT

5 A. While the Court May Not Entertain Federal or State Constitutional 6 Challenges to the Initiative at this Time, It Can Nevertheless Review the Substance of the Initiative Itself.

7 Petitioners take Nevada case law out of context when urging the Court to refrain
8 from looking too closely at the substance of their proposed Initiative. *See* Omnibus Response at
9 6:14–7:19 (“[N]o Nevada court may inquire into the substance of an initiative at this juncture in
10 any event.”). In *Herbst Gaming, Inc. v. Heller*, the case Petitioners rely upon for this notion, the
11 Nevada Supreme Court ruled that pre-election challenges to the *substantive validity* of an initiative
12 are off limits. 122 Nev. 877, 886, 141 P.3d 1224, 1230 (2006) (citing *Garvin v. Ninth Judicial*
13 *Dist. Court ex rel. Cnty. of Douglas*, 118 Nev. 749, 766, 59 P.3d 1180, 1191 (2002)). In other
14 words, the Court cannot consider whether, if enacted, the Initiative would violate substantive
15 federal or state constitutional provisions. *Id.* at 892, 141 P.3d at 1234 (refusing to consider
16 arguments “based on the alleged unconstitutionality of the measure, if it were passed.”) These
17 types of challenges are similar to challenges based on a question of ripeness—they require
18 hypothesizing on possible future harm. *Id.* at 887–88, 141 P.3d at 1230–31 (citing *In re T.R.*, 119
19 Nev. 646, 651, 80 P.3d 1276, 1279–80 (2003)). Under this progeny of case law, what the Court
20 cannot do is apply hypothetical facts to a proposed initiative to entertain a substantive federal or
21 state constitutional challenge. *Id.* at 883–93, 141 P.3d at 1228–34.

22 Restricting the Court from reviewing the substance of an initiative to evaluate it for
23 possible constitutional violations is not the same as restricting the Court from reviewing the
24 substance of an Initiative for *any* purpose. Rather, the Court must, for example, review the

1 substance of the Initiative in order to determine the Initiative's purpose and whether it violates
2 NRS 295.009's single-subject mandate. *See Las Vegas Taxpayer Accountability Comm. v. City*
3 *Council of City of Las Vegas*, 125 Nev. 165, 180, 208 P.3d 429, 439 (2009) (Reviewing the full
4 text of an initiative in order to discern the initiative's purpose.) Indeed, precluding the Court from
5 substantive review to determine whether an initiative violated the single subject rule, would
6 effectively preclude judicial determination of that very issue. One might ask how the Court could
7 ever determine a violation of the single subject rule without considering the substance. Moreover,
8 Petitioners attempt to distract the Court by alluding to supposed challenges to the Initiative asserted
9 by the various Plaintiffs that Petitioners argue would somehow violate the ruling in *Herbst* simply
10 because the Initiative contains references to existing law that the Initiative seeks to modify.
11 Omnibus Brief at 6:20–24. But none of those challenges referenced by Petitioners are relevant
12 here. Instead, consistent with *Herbst*, Plaintiffs merely ask the Court to examine the Initiative to
13 ensure its subject matter does not violate statutory limitations on the initiative power, i.e., does the
14 Initiative violate the single subject rule and does the Initiative proffer a misleading description of
15 effect. *See Herbst*, 122 Nev. at 883, 141 P.3d at 1228; *see also* NRS 295.009.

16 **B. The Statutory Requirements Placed on Initiatives are a Necessary Component**
17 **to Safeguard the Integrity of the Initiative Process.**

18 Petitioners dedicate a large portion of their Omnibus Brief to laud the people's right
19 to the initiative process in Nevada. However, statutory requirements such as the single subject
20 rule are an integral part of that process. The single subject rule is intended to promote "informed
21 decisions and in preventing the enactment of unpopular provisions by attaching them to more
22 attractive proposals or concealing them in lengthy, complex initiatives." *Las Vegas Taxpayer*
23 *Accountability Comm. v. City Council of City of Las Vegas*, 125 Nev. 165, 176, 208 P.3d 429,
24 436–37 (2009) (citing *Nevadans for Prop. Rights v. Sec'y of State*, 122 Nev. 894, 905, 141 P.3d

1 1235, 1242 (2006)). These necessary requirements do not detract from the initiative power, but
2 rather ensure its integrity:

3 our precedents clearly recognize that the single-subject requirement serves an
4 important role in preserving the integrity and efficacy of the initiative process. In
5 this regard, it bears emphasis that proper application and enforcement of the single-
6 subject rule is by no means inconsistent with the cherished and favored role that the
7 initiative process occupies in our constitutional scheme, but on the contrary
8 constitutes an integral safeguard against improper manipulation or abuse of that
9 process.

7 *Senate of State of Cal. v. Jones*, 21 Cal. 4th 1142, 1158 (1999); *Clark v. Jordan*, 7 Cal. 2d 248,
8 252 (1936) (“we are also of the opinion that statutes passed for the purpose of protecting electors
9 from confusing or misleading situations should be enforced.”)

10 The restrictions placed on a description of effect similarly afford necessary
11 protections to Nevada’s voters. *See Las Vegas Taxpayer Accountability Comm.* at 177, 208 P.3d
12 at 437 (“the requirement that each measure include a description of effect facilitates the
13 constitutional right to meaningfully engage in the initiative process by helping to prevent voter
14 confusion and promote informed decisions.”) (internal citations and quotations omitted).
15 Accordingly, no matter how fervently Petitioners believe in their Initiative, it must nevertheless
16 comply with Nevada’s statutory requirements, to ensure, rather than detract from, the integrity of
17 the initiative power.

18 **C. The Initiative Violates the Single Subject Rule.**

19 Petitioners attempt to force the various subjects presented in their Initiative into a
20 single “primary purpose” by claiming a purpose so general and broad it violates the single subject
21 rule. As outlined by Petitioners, the Court must first determine the Initiative’s “purpose” in order
22 to evaluate whether or not it violates the single subject rule. Omnibus Brief at 8:2–7 (citing *Helton*
23 *v. Nevada Voters First PAC*, 138 Nev. Adv. Op. 45, 512 P.3d 309, 314 (2022)). To undertake this
24 analysis, the Court must look to the Initiative’s “textual language and the proponents’ arguments”

1 as well as the description of effect. *Las Vegas Taxpayer Accountability Comm.* at 180, 208 P.3d
2 at 439.

3 **1. The Initiative Violates the Single Subject Rule Through the Initiative's**
4 **Purported Purpose According to its Text and Description.**

5 Petitioners claim their "primary purpose" is "an overall program of *consumer debt*
6 *relief*." Omnibus Brief at 9:8–13. Interestingly, the Court will not find that stated purpose in either
7 the text of the Initiative or its description of effect. Rather, the Initiative's text lauds the Initiative's
8 purpose as protecting against *predatory payday lending*. See Ex. 1 to Activehours Brief in Support
9 of Complaint at Sec. 2 ("The provisions of this chapter shall be liberally construed to achieve its
10 purposes, which are combatting predatory payday lending and other high-cost loans...").
11 However, the phrase "predatory payday lending" is never defined in the Initiative, so one can only
12 speculate as to what types of activities Petitioners envision being encompassed by the Initiative's
13 stated purpose. The description of effect, on the other hand, purports a purpose of addressing "high-
14 interest lending practices." *Id.* at p.12 ("This measure addresses *high-interest lending practices*
15 by establishing maximum interest rates charged to consumers.")

16 Activehours, and Plaintiffs in general, thoroughly set forth in their respective briefs
17 the various reasons why the Initiative violates the single subject rule. In their Omnibus Brief in
18 response to these arguments, Petitioners urge the Court to disregard the fact that the Initiative will
19 effectively amend numerous existing chapters of the Nevada Revised Statutes, exclaiming "so
20 what?" that the Initiative's reach is so broad. But in doing so, Petitioners miss the point. The point
21 is not that the Initiative is invalid *because* it attempts to change existing law in various Chapters
22 of the Nevada Revised Statutes. Rather, the inquiry is, through its expansive reach into various
23 chapters, does the Initiative touch upon more than a single (i.e., one) subject? The answer to that
24 question is an emphatic "yes." The Initiative's expansive reach to amend numerous provisions of

1 Nevada law is evidence of the Initiative's intent to address multiple subjects.

2 The clearest example of this is with the Initiative's inclusion of earned wage access
3 services within its framework. Nevada law prohibits earned wage access services from charging
4 consumers any interest on earned but unpaid amounts of income. *See* Activehours Brief in Support
5 of Complaint at 5:1–19 and Ex. 2, Sec. 31(c)–(d). Nevada law further provides that earned wage
6 access services are not loans. *Id.* So, if the Initiative's stated purpose is to address "*lending*
7 *practices*," whether "high-interest" or "predatory payday lending," the Initiative violates Nevada's
8 single subject rule by including earned wage access services which, under Nevada law, are
9 explicitly excluded from the definition of a "loan" and do not charge interest. A service that is not
10 a loan nor permitted to charge consumers interest cannot be "functionally related or reasonably
11 germane" to a stated purpose of addressing *lending practices* and high-interest *loans*. *See* NRS
12 295.009(2) (An initiative petition embraces one subject "if the parts of the proposed initiative or
13 referendum are functionally related and germane to each other in a way that provides sufficient
14 notice of the general subject of, and of the interests likely to be affected by, the proposed initiative
15 or referendum.")

16 **2. The Initiative Violates the Single Subject Rule Because the Initiative's**
17 **Purported Purpose as Set Forth in the Omnibus Brief Is Overly Broad.**

18 Faced with challenges to the Initiative's stated purpose through its text and
19 description of effect, Petitioners now expand their stated purpose to encompass "*consumer debt*
20 *relief*" generally, attempting to ensure that all challenged subjects fall within a single stated
21 purpose. The problem with this new stated purpose is that it is so broad and general that it
22 inherently addresses a multitude of subjects, thereby violating the single subject rule.¹ Here, the

23 _____
24 ¹ This description also fosters confusion, as earned wage access itself is not a "consumer debt relief" product.

1 Nevada Supreme Court's analysis in *Las Vegas Taxpayer Accountability Comm'n.* is instructive.
2 There, proponents of an initiative intended to amend the city charter to require voter approval for
3 certain lease-purchase arrangements and for redevelopment decisions, arguing that the initiative's
4 stated purpose was "to provide the voters of Las Vegas with greater input into the City's
5 redevelopment decisions by requiring voter approval for major redevelopment decisions." 125
6 Nev. at 181, 208 P.3d at 440. The Nevada Supreme Court ruled this stated purpose was an
7 "excessively general subject that cannot meet NRS 295.009's requirement." *Id.*

8 In its decision, the Nevada Supreme Court relied in part on the ruling in *Senate of*
9 *State of Cal. v. Jones*, 21 Cal. 4th 1142, 1159 (1999). There, the California Supreme Court
10 conducted an in-depth analysis on the permitted parameters of a purported purpose. *Id.* In doing
11 so, the California Supreme Court reviewed various rulings with facts similar to those here. For
12 example, in *California Trial Lawyers Assn. v. Eu*, the text of an initiative claimed the purpose was
13 to *control the cost of insurance*, but when faced with challenges, proponents broadened this
14 purpose and instead went with "*regulate the practices of the insurance industry.*" 245 Cal. Rptr.
15 916, 921 (Ct. App. 1988), *abrogated on other grounds by Lewis v. Superior Court*, 19 Cal. 4th
16 1232 (1999). The Court in *California Trial Lawyers* rejected that purpose, stating:

17 we cannot accept the implied premise of [the insurers'] analysis, i.e., that any two
18 provisions, no matter how functionally unrelated, nevertheless comply with the
19 constitution's single-subject requirement so long as they have in common an effect
20 on any aspect of the business of insurance. Contemporary society is structured in
21 such a way that the need for and provision of insurance against hazards and losses
22 pervades virtually every aspect of life. [The insurers'] approach would permit the
23 joining of enactments so disparate as to render the constitutional single-subject
24 limitation nugatory.

Id.

25 Similarly, in *Chem. Specialties Mfrs. v. Deukmejian*, the California Court of
26 Appeals addressed a single subject challenge to an initiative entitled "Public's Right to Know Act."

1 278 Cal. Rptr. 128, 132 (Ct. App. 1991). The initiative in that case “contained a series of diverse
2 provisions that ostensibly were related by the circumstance that each provision required public
3 disclosure of some information.” *Jones*, 21 Cal. 4th at 1159–60 (citing *Deukmejian*, 278 Cal. Rptr.
4 at 132–33). As in *California Trial Lawyers*, the Court in *Deukmejian* determined the purpose of
5 the initiative was so broad as to render the single subject requirement meaningless:

6 Proposition 105 mandated separate disclosure requirements for (1) household toxic
7 products, (2) senior's health insurance, (3) nursing homes, (4) statewide initiative
8 or referendum campaigns, and (5) sales of stock or securities for corporations doing
9 business with South Africa, requiring the disclosure of different information in each
10 of these areas. Although the supporters of Proposition 105 asserted that all of its
11 provisions were reasonably germane to the single subject of “public disclosure” or
“truth-in-advertising,” the Court of Appeal in *Chemical Specialties* rejected that
argument, finding that such a subject was clearly one of “excessive generality” and
was “so broad that a virtually unlimited array of provisions could be considered
germane thereto and joined in this proposition, essentially obliterating the
constitutional requirement.”

12 *Jones*, 21 Cal. 4th at 1159–60 (internal citations and quotations omitted); *see also Las Vegas*
13 *Taxpayer Accountability Comm.* at 181, 208 P.3d at 439–40 (reviewing and relying on the ruling
14 in *Deukmejian*).

15 The same analysis is applicable here. When faced with a challenge to the purpose
16 stated in the Initiative’s text, Petitioners broadened their stated purpose to “consumer debt relief.”
17 The stated purpose is too general and overly broad. Like the court in *California Trial Lawyers*
18 noted with regard to *controlling the cost of insurance*, the stated purpose of “consumer debt relief”
19 is too general and overly broad because, as with insurance, consumer debt “pervades virtually
20 every aspect of life.” Therefore, that stated purpose “would permit the joining of enactments so
21 disparate as to render the constitutional single-subject limitation nugatory.” *See California Trial*
22 *Lawyers, supra*. Only under such a broad umbrella can Petitioners attempt to relate so many
23 disparate subjects including earned wage access services and relief from enforcement of
24 judgments. But Petitioners cannot use an all-encompassing stated purpose to avoid complying with

1 the single subject rule as they clearly attempt to do here.

2 **D. The Initiative's Misleading Description of Effect Violates NRS 295.009.**

3 The Initiative's description of effect fails to properly inform voters of the
4 consequences of the Initiative and is therefore misleading and inadequate. A description of effect
5 must sufficiently "explain these ramifications of the proposed amendment" to allow voters to make
6 an informed decision. *Nevada Judges Ass'n v. Lau*, 112 Nev. 51, 59, 910 P.2d 898, 903 (1996).
7 The description must, at a minimum, accurately describe the main consequences of the initiative.
8 *Las Vegas Taxpayer Accountability Comm.*, 125 Nev. at 16 184 208 4 P.3d at 441.

9 In defending their description of effect, Petitioners argue they do not need to
10 address, in their description of effect, each of Plaintiffs' specific concerns with their Initiative. *See*
11 *Omnibus Brief* at 19:20–24. Through their flippant remarks, Petitioners both miss the point and
12 fail to address the deficiencies with their description of effect. Petitioners take the stance that the
13 description of effect must inform voters of the effect the Initiative will have on *them*, "not the
14 hypothetical effects on Activehours." *Id.* at 20:3–4. Activehours agrees. But Petitioner's
15 description of effect does not provide the necessary information for voters to make an informed
16 decision. As set forth in its Brief in Support of Complaint, the issue with Petitioners' description
17 of effect is that a voter would never know that the underlying Initiative touches upon earned wage
18 access services because *they are not loans* as a matter of law. That is because, the description of
19 effect specifically informs voters that the underlying Initiative fixes purported problems with
20 "high-interest lending practices," thereby failing to inform voters of the full consequences of the
21 Initiative.

22 The same is true with the various other categories of loans the Initiative includes
23 within its broad purpose of "*consumer debt relief*." While loans, deferred deposit loans, refund
24 anticipation loans, and title loans, to name a few, are expressly excluded from the definition of

1 “high-interest” loans. How then would a voter know that the Initiative, which tells them it will
2 affect “high-interest lending practices,” affect not only loans that are *not* high-interest, but also
3 services that are not loans at all under Nevada law? Voters would not and could not know that,
4 rendering the description of effect misleading and therefore in violation of NRS 295.009.

5 **III. CONCLUSION**

6 For those reasons, as more fully set forth in Activehours’ Brief in Support of
7 Complaint for Declaratory and Injunctive Relief, the Court should enjoin the Nevada Secretary of
8 State from taking further action upon the Initiative as it violates NRS 295.009’s single subject rule
9 and prohibition against misleading descriptions of effect.

10 **AFFIRMATION**

11 Pursuant to NRS 239B.030, the undersigned affirms this document does not contain
12 the personal information or social security number of any person.

13 KAEMPFER CROWELL

14 

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18 and Stacy Press

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Kaempfer Crowell; that I am familiar with the firm's practice of collection and processing documents; that, in accordance with those practices, I caused the **ACTIVEHOURS, INC.'S AND STACY PRESS'S REPLY IN SUPPORT OF THEIR BRIEF IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION S-03-2024** to be deposited with the U.S. Postal Service at Reno, Nevada, in a sealed envelope, with first class postage prepaid to the addressee(s) shown below:

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7 **FIRST JUDICIAL DISTRICT COURT OF NEVADA**
8 **IN AND FOR CARSON CITY**

9 NEVADANS FOR FINANCIAL CHOICE, a
Nevada Political Action Committee, and
10 CHRISTINA BAUER, an individual,
11 Plaintiffs,

12 vs.

13 KATE FELDMAN, an individual, STOP
PREDATORY LENDING NV, a Nevada
14 Nonprofit Corp., and FRANCISCO V.
AGUILAR, in his official capacity as Nevada
15 Secretary of State,

16 Defendants.

17 DAILYPAY, INC., a Delaware Corporation,

18 Plaintiff,

19 vs.

20 FRANCISCO V. AGUILAR, in his official
capacity as NEVADA SECRETARY OF
21 STATE,

22 Defendant,

23 and

24 STOP PREDATORY LENDING NV, a
Nevada Nonprofit Corp., and KATE
25 FELDMAN, an individual,

26 Intervenor-Defendants.

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2024-08-08 PM 6:08
D. ORTIZ

Lead Case No. 24-OC-00021B

Dept. No. II

Consolidated with

Case No.: 24 OC 00021 1B

Dept. No.: II

1 **PREFERRED CAPITAL**
2 **FUNDINGNEVADA, LLC**, a Nevada limited
3 **liability company**, and **ALLIANCE FOR**
4 **RESPONSIBLE CONSUMER LEGAL**
5 **FUNDING**, an Illinois nonprofit corporation,

6 Plaintiffs,

7 vs.

8 **FRANCISCO V. AGUILAR**, in his official
9 **capacity as NEVADA SECRETARY OF**
10 **STATE**, and **KATE FELDMAN**, an
11 individual,

12 Defendants,

13 and

14 **STOP PREDATORY LENDING NV**, a
15 Nevada Nonprofit Corp.,

16 Intervenor-Defendant.

17 **ACTIVEHOURS, INC.**, a Delaware
18 corporation; **STACY PRESS**, an
19 individual,

20 Plaintiffs,

21 vs.

22 **KATE FELDMAN**, an individual; **STOP**
23 **PREDATORY LENDING NV**, a Nevada
24 Nonprofit Corp.; and **FRANCISCO V.**
25 **AGUILAR**, in his official capacity as
26 **NEVADA SECRETARY OF STATE**,

27 Defendants.

Case No.: 24 OC 00023 1B
Dept. No.: I

Case No.: 24 OC 00029 1B
Dept. No.: I

**PLAINTIFF DAILYPAY'S REPLY IN
SUPPORT OF COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

28 Plaintiff DAILYPAY, INC. ("DailyPay"), by and through counsel of the law firm
HOLLAND & HART LLP, hereby submits this REPLY to DEFENDANTS/INTERVENORS
KATE FELDMAN's and STOP PREDATORY LENDING NV's (the "Intervenors") OMNIBUS
RESPONSE filed on February 29, 2024, in the above-captioned consolidated cases challenging
Initiative Petitions S-01-2024 and S-03-2024 ("Petitions") under NRS 295.061. DailyPay's Reply
is based on DailyPay's Complaint and attached Exhibits, all pleadings and papers on file, and any

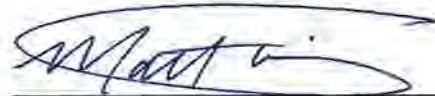
1 oral argument that this Court may allow at hearing. Pursuant to FJDCR 3.23(b), this Memorandum
2 of Points and Authorities is limited to ten pages exclusive of exhibits.

3 **AFFIRMATION**

4 As required under NRS 239B.030(1) and NRS 603A.040, undersigned counsel hereby
5 affirms that the REPLY IN SUPPORT OF COMPLAINT FOR DECLARATORY AND
6 INJUNCTIVE RELIEF filed herewith does not contain the personal information of any person.

7 DATED this 8TH day of March 2024.

8 HOLLAND & HART LLP

9 

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18 *Attorneys for DailyPay, Inc.*

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

The Intervenors may believe that earned wage access services are “predatory” and may wish that Nevada’s Legislature had not approved SB 290,¹ which provides by statute that earned wage access services are not loans, are not lending, and are not credit products. Intervenors cannot, however, wish away the fact that the Legislature has adopted clear policy imperatives regarding the treatment of earned wage access services. These policies memorialize in state law that earned wage access services are not loans and that earned wage access service providers are not lenders nor subject to Nevada’s lending laws. Intervenors are entitled to oppose these policies if they so choose, but they may not proceed as if existing law does not already address them. If Intervenors wish to repeal by petition the Legislature’s policy decisions regarding the treatment of earned wage access services, they must inform voters of their objective and use the proper referendum process to do so. The Petitions fail on both fronts. They do not inform voters that they seek to change the Legislature’s determinations on earned wage access services as reflected in SB 290, nor do they use the appropriate referendum mechanism to do so.

Intervenors’ Omnibus Response simply ignores NRS 295.009(2)’s well-defined single-subject standard, requiring this Court to evaluate whether the Petitions have sufficiently notified signatories of the interests the Petitions are likely to affect. NRS 295.009(2) provides that “[A] petition for initiative or referendum embraces but one subject and matters necessarily connected therewith and pertaining thereto, if the parts of the proposed initiative or referendum are functionally related and germane to each other in a way that provides sufficient notice of the general subject of, and of the interests likely to be affected by, the proposed initiative or referendum.” NRS 295.009(2) (emphases added). Rather than defend Petitions’ compliance with NRS 295.009(2), the Intervenors instead argue that “nothing in law...requires each provision of an initiative to be functionally related and germane to each other,” despite NRS 295.009(2)’s clear language to the contrary. Omnibus Resp. (“Resp.”), at 12:25-28. Intervenors fail to cite NRS 295.009(2) a single time in the entirety of their Response. Instead, and in disregard of Nevada’s

¹ All terms capitalized but not defined herein have the meanings assigned to them in DailyPay’s Memorandum in Support.

1 existing statutory authority, Intervenor invite this Court to apply a different single-subject standard
2 that flatly contradicts NRS 295.009(2).

3 Intervenor fail to show the Petitions' shortcomings are anything short of fatal. The
4 Petitions violate the single-subject rule because they do not sufficiently notify signatories who are
5 earned wage access users, earned wage access service providers, or partners of EWA providers.
6 that their interests will be affected by the Petitions' repeal of SB 290. The Petitions not only fail to
7 explain their proposed repeal of clear statutory language which provides earned wage access
8 services are not loans, but the Petitions withhold the very language they ask Nevada voters to
9 amend. Intervenor offer no explanation how the Petitions comply with NRS 295.009(2), failing
10 even to cite the correct legal standard found within the Nevada Revised Statutes in their Response.

11 **II. Condensed Factual Background and Procedural Summary²**

12 Senate Bill 290 ("SB 290"), signed into law on June 13, 2023, authorizes the licensure and
13 regulation of earned wage access ("EWA") services in Nevada.³ The Petitions were filed on January
14 5, and January 24, 2024.⁴ The Petitions propose to enact the "Preventing Predatory Payday and
15 Other Loans Act,"⁵ which would define the term "loan" to include "any sale, assignment, order or
16 agreement for the payment of unpaid wages, salary...or other income....whether earned, to be
17 earned or contingent upon future earnings, that is made in consideration for....the payment of
18 money to or for...the person earning or receiving...the wages...or other income." (emphasis
19 added)⁶ Thus, the Petitions would penalize EWA services, EWA service providers, and the
20 employers who offer EWA services to workers, as authorized under SB 290, which directs that
21 EWA services are not loans and that EWA service providers are not lenders. DailyPay filed its
22 Complaint on January 29, 2024, challenging both Petitions under NRS 295.061 and on
23 constitutional grounds. Specifically, the Complaint challenges both Petitions as violating the
24 Nevada Constitution's and NRS 295.009's single-subject, description-of-effect, fiscal impacts, and
25 "full text" requirements.

26 ² DailyPay does not dispute Intervenor's Statement of Facts and Procedural History (Resp. at 3-4) and includes this
27 condensed factual and procedural summary for ease of reference.

28 ³ See, DailyPay Memorandum in Support of Complaint, Ex. 1.

⁴ Petitions S-01-2024 and S-03-2024, attached as Ex. 2 and Ex. 3 to DailyPay's Memorandum in Support.

⁵ DailyPay Memorandum in Support, Exs. 2 and 3, at 1.

⁶ *Id.*, Exs. 2 and 3, at Sec. 5(1)(c) ("Loan defined").

1 **III. Legal Arguments**

2 **A. *The Intervenors Ignore Clear and Controlling Law Under NRS 295.009(2).***

3 The Court should set aside Intervenors' Response because it overlooks or ignores existing
4 law that squarely governs this dispute. Intervenors assert that "[n]othing in law or the Nevada
5 Supreme Court's jurisprudence requires each provision of an initiative to be functionally related
6 and germane to *each other*; rather, they need only be functionally related and germane to the
7 initiative's overall policy goal." Resp., at 12:25-28 (emphasis in original). On this point,
8 Intervenors are simply wrong. NRS 295.009(2) mandates what the Response claims "nothing in
9 law," requires, and explicitly provides that "a petition for initiative or referendum embraces but
10 one subject and matters necessarily connected therewith and pertaining thereto, if the parts of the
11 proposed initiative or referendum are functionally related and germane to each other in a way that
12 provides sufficient notice for the general subject of, and of the interests likely to be affected by,
13 the proposed initiative or referendum." NRS 295.009(2) (emphases added). Under this statutory
14 standard, a petition that does not notify voters of the "interests likely to be affected" by the Petition
15 necessarily fails to "embrace[] but one subject and matters necessarily connected therewith and
16 pertaining thereto." NRS 295.009(1). The Petitions make no attempt to inform voters who are also
17 EWA users, EWA providers, or partners of EWA providers that their interests are likely to be
18 affected by the Petitions' new restrictions, and thus fall far short of NRS 295.009(2)'s standard.

19 Intervenors fail to discuss NRS 295.009(2)'s single-subject standard and misapprehend its
20 requirement that the Petitions sufficiently notify voters of the interests the Petitions are likely to
21 affect. Intervenors argue, for example, that whether or not DailyPay "provides services that many
22 people use...none of that matters." Resp., at 2:8-10. To the contrary, under NRS 295.009(2) it is
23 critical to a fair democratic process that thousands of signatories who also use or offer DailyPay's
24 EWA services⁷ be informed that the Petitions they are asked to support will affect their interests.

25 To agree with Intervenors that the Petitions "need only be functionally related and germane
26 to the initiative's overall policy goal,"⁸ is to rewrite a standard into NRS 295.009(2) that does not
27 exist, impermissibly rendering NRS 295.009(2) a nullity. "When interpreting a statute, this court

28 ⁷ DailyPay Complaint, at ¶ 16; DailyPay Memorandum in Support of Complaint, at 8:21-24

⁸ Omnibus Resp., at 12:27-28

1 must give its terms their plain meaning, considering its provisions as a whole so as to read them in
2 a way that would not render words or phrases superfluous or make a provision nugatory.” *So. Nev.*
3 *Homebuilders Ass’n v. Clark Cty.*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005) (internal quotation
4 marks and citation omitted). DailyPay respectfully submits that this Court should decline
5 Intervenor’s invitation to amend away NRS 295.009(2)’s single-subject standard.

6 **B. *The Petitions’ Description of Effect is Argumentative and Deceptive.***

7 NRS 295.009(1)(b) requires the Petitions to describe their effects of the petition if
8 approved. Intervenor’s dismissively assert “a description of effect serves a specific and limited
9 purpose,”⁹ but Nevada law places far more importance on the description of effect than Intervenor’s
10 care to admit. The description of effect “is significant as a tool to help ‘prevent voter confusion
11 and promote informed decision.” *Las Vegas Taxpayer Accountability Cmte. v. City Council of City*
12 *of Las Vegas*, 125 Nev. 165, 183, 208 P.3d 429, 441 (2009) (quoting *Nevadans for Nev. v. Beers*
13 122 Nev. 930, 939, 142 P.3d 339, 345 (2006)). This is because the description of effect “is what
14 the voters see when deciding to sign a petition, and...[it] must accurately inform petition signers
15 of the nature and effect of that which is proposed.” *No Solar Tax PAC v. Citizens for Solar and*
16 *Energy Fairness*, 132 Nev. 1012, 2016 WL 4182739 (2016) (unpublished) (citations omitted).

17 The Petitions’ descriptions of effect are silent on the proposed repeal of SB 290’s EWA
18 provisions. The description of effect’s sole reference potentially describing EWA services is
19 argumentative at best, referring only to “structuring transactions to mask their nature as loans
20 covered by this measure...”. (Emphasis added).¹⁰ The Petitions’ failure to explain that they seek to
21 convert non-loan transactions to become loans, and non-lender entities to become “predatory
22 lenders” is misleading, and therefore inadequate, under NRS 295.009. The description of effect’s
23 reference to transactions that are “masked” to hide their “nature as loans” misleadingly suggests
24 that EWA transactions are “loans” despite existing law (SB 290) which states they are no such
25 thing. The description of effect does not tell a signatory “what the initiative will accomplish” and
26 “how it will achieve those goals” in a nonargumentative and transparent manner, *Educ. Initiative*
27 *PAC*, 129 Nev. at 38, 293 P.3d at 876, and is therefore wholly inadequate.

28 ⁹ Omnibus Resp., at 14:21.

¹⁰ Daily Pay Memorandum in Support of Complaint, Ex. 2, at 19; Ex 3, at 11.

1 **C. *The Petitions Seek to Repeal SB 290 and Must Include its Full Text.***

2 Intervenors first correctly argue that “because the people’s initiative power is legislative in
3 nature, that power is subject to the same prerogatives and limitations placed upon a Legislature.”
4 Resp., at 5:11-16. Intervenors then reverse course to argue the Nevada Constitution’s “full text”
5 requirement (which applies to legislative amendments) should not apply to these Petitions. To
6 support this assertion, Petitioners argue only that the “full text” requirement would render the
7 Petitions “ridiculously long, unnecessarily complex and incredibly burdensome to propose.”
8 Resp., at 23:28-24:1-2. The Nevada Constitution’s “full text” requirements apply to legislation and
9 to initiative petitions alike, and require the Petitions to include the full text of SB 290, which the
10 Petitions effectively seek to repeal.

11 The Nevada Constitution, at Art. 4, Sec. 17, and Art. 19, Sec. 3, forbids the exercise of
12 lawmaking power, whether by the Legislature or by direct initiative, that purports to amend
13 existing law without providing the language to be amended in its entirety, and in full context. Thus,
14 “***no law shall be revised or amended*** by reference to its title only; but, in such case, the act as
15 revised or section as amended, ***shall be re-enacted and published at length.***” NEV. CONST., ART
16 IV., Sec. 17 (emphases added). In the petition context, “each referendum and initiative petition
17 ***shall include the full text*** of the measure proposed.” NEV. CONST. ART. XIX, Sec. 3(1)
18 (emphases added). The Nevada Constitution’s language is unambiguous, but NRS 295.0575(6)
19 reinforces this constitutional requirement by mandating that “each signer had an opportunity
20 before signing to read the full text of the act or resolution on which the initiative or referendum is
21 demanded.” NRS 295.0575(6).

22 The Petitions expressly invoke the definitions that SB 290 that codified in statute, and, if
23 passed, would effectively repeal SB 290’s provisions that define EWA services to not constitute a
24 loan or other credit product. It doubtless would be easier and less “burdensome” for Petitioners to
25 withhold the full language of a bill they ask voters to repeal, and to disregard Nevada’s
26 constitutional and statutory requirements in the process to do so. Intervenors’ expediency is
27 irrelevant to this Court’s determination of whether constitutional and statutory prerequisites to the
28 people’s exercise of legislative power have been met. Both the Nevada Constitution and NRS

295.0575 require the “full text” of the proposed measure to be included with the Petition, to ensure that signatories have a fair opportunity to consider the proposal in its entirety, and “to review the measure’s full text before signing...the requirement that each signer be given the opportunity to review a measure’s full text serves the purpose of ensuring that signers know what they are supporting.” *Las Vegas Conv. and Visitors Auth. v. Miller*, 124 Nev. 669, 686, 191 P.3d 1138, 1149 (2008).

While Intervenor’s lament the “complexities” and “burdens” that are attendant to complying with the “full text” rule, it would be absurd to allow circulators to bypass these legal requirements merely because they choose to propose an overly broad Petition attacking a constellation of disparate subjects through various statutory amendments and outright repeals. If the Intervenor’s wish to circulate a more concise and simplified Petition for voters to review, they are free to do so. If Intervenor’s insist on amending and repealing SB 290 as proposed in the Petitions,¹¹ though, then they must satisfy the procedural requirements that govern lawmaking by petition. Intervenor’s bear the burden to explain to voters precisely how SB 290 “defined the transactions”¹² the Petitions propose to re-define through voter assent, but without providing the full, original definition to serve as a basis for comparison. As was the case in *Las Vegas Convention and Visitors Authority*, here too, it is emphatically the proponents of the initiative, not the challengers, who are “required to demonstrate that they substantially complied with [NRS 295.0575]. The burden is...on the proponents in this case because they caused the situation when they failed to review the current statutes and comply with their requirements.” *Las Vegas Conv. and Visitors Auth.*, 124 Nev. at 682, 191 P.3d at 1147 (emphasis added). Intervenor’s themselves proclaim to be “masters of their petitions,” Resp., at 25:7-8, acknowledging that they choose whether they want to ask voters to repeal existing legislation or not. If the “masters of the petition” choose to amend and repeal a complex piece of regulatory legislation, they must also abide by the “full text” rules that ensure a signatory has a fair chance to review what they are asked to amend.

¹¹ Intervenor’s admit that they wish to amend SB 290 through their Petitions, as Intervenor’s admit, in relevant part, that the legislation “defined [earned wage access] transactions one way through a Senate bill,” Resp., at 13:11-12.

¹² *Id.*

Intervenors' failure to provide SB 290's full text deprives potential signatories of the Petition, including EWA users or employers that offer EWA services to their workers, of notice that supporting the Petition would adversely affect their interests. It is precisely this harm that the "full text" requirement and NRS 295.0575(6)'s affidavit requirement exist to prevent.

D. *Intervenors Fail to Dispute the Petitions' Fiscal Impacts.*

Intervenors also ignore the substance of DailyPay's argument regarding the Petitions' fiscal impacts, asserting that "DailyPay...actually argues [the Petitions] would increase exposure to increased regulation and enforcement for DailyPay itself, not for the general public[.]" Resp., at 22:15-23. DailyPay does not argue that the Petitions will increase regulatory exposure only for DailyPay itself, but that the Petitions' broad and undefined terminology will vastly expand the required regulatory oversight and enforcement rules against business entities that are not even remotely related to Nevada's currently regulated lending industry.

Intervenors make light of DailyPay's argument that the Petitions fail, for example, to define the term "person,"¹³ for purposes of new restrictions, liabilities, and penalties. Yet, without such a definition the Petitions will apply by default to an expansive class that includes: "a natural person, any form of business or social organization and any other nongovernmental legal entity, including...a corporation, partnership, association, trust or unincorporated organization." NRS 0.039. Intervenors correctly note that that this Court should "'look to [the Petitions'] textual language'" in evaluating their meaning, effects, and scope.¹⁴ If the Court examines the Petitions' textual language, which lacks key definitions for operative terms such as "person," "consumer," and "borrower," and instead deploys argumentative terminology such as "predatory" throughout, the Court would have to conclude that the Petitions significantly expand the State's regulatory oversight to apply to any "other person" who "markets, offers, brokers, arranges, facilitates, makes or services a loan as defined" in the Petitions. DailyPay directs this Court to SB 290's fiscal note because SB 290 enacted a far narrower jurisdictional and regulatory regime for State financial regulators to oversee, which still imposed a cost of several hundred thousand dollars per fiscal

¹³ Omnibus Resp. at 17:24-26.

¹⁴ Omnibus Resp. at 8:4-6 (citing *Helton*, 512 P.3d at 314).

1 year.¹⁵ The Petitions seek to expand the regulatory regime State financial regulators are required
2 to administer; it logically follows that the price tag for administering this expanded scope of
3 regulation must increase as well.

4 Further, the Legislature's fiscal analysis division has not determined that the Petitions have
5 no fiscal impacts. NRS 295.015(3)(b) requires the Fiscal Analysis Division of the Legislative
6 Counsel Bureau (LCB) to determine whether the petition for initiative or referendum may have any
7 anticipated financial effect on the State. LCB's Fiscal Analysis Division must "prepare a fiscal note
8 regarding the petition that includes an explanation of any such effect." NRS 295.015(3)(b). On
9 February 8, 2024, LCB's Fiscal Analysis Division stated it "is unable to provide a completed
10 financial impact statement to be posted by the Secretary of State's Office within the ten business
11 days prescribed," and "A fiscal note that includes an explanation of any financial impact will
12 be provided to the Secretary of State when completed["]."¹⁶ If, as Intervenor urge, the Petitions'
13 financial impacts were non-existent or were impossible to determine, LCB's fiscal experts could
14 have stated as much, as they did for Constitutional Initiative Petition C-01-2023, for which LCB
15 Fiscal stated it "cannot determine whether the provisions of the Initiative, if approved by voters,
16 would have a financial effect...with any reasonable degree of certainty."¹⁷ This Court should not
17 permit the Petitions to proceed until a fiscal impact statement is submitted under NRS 295.015(3).

18 **E. The Petitions are a Referendum on SB 290 and Must be Designated as Such.**

19 Finally, Intervenor fail to meaningfully address DailyPay's argument that the Petitions,
20 which effectively seek to repeal SB 290 in their substance, are misidentified as "Initiative
21 Petitions," and should instead be designated a referendum on SB 290. Intervenor exalt form over
22 substance, brashly contending that they have the final say on the matter simply by how they
23 designate their Petitions, as "initiative proponents...are masters of their petitions. In other words,
24 as far as the law is concerned, if there is any question regarding the character of the Petitions, they
25 are exactly what Proponents say they are[.]" Resp., at 25:7-10. Nevada law requires otherwise, and

26 ¹⁵ Fiscal Note 8397, SB290, Nev. Financial Institutions Div. (Mar. 22, 2023) (DailyPay Complaint, Ex. 4).

27 ¹⁶ See, Nev. Secretary of State Elections, Financial Impact of S-3-2024 (LCB Fiscal Analysis Div., Feb. 8, 2024) at
<https://www.nvsos.gov/sos/home/showpublisheddocument/12990/638430618583770000> (accessed March 6, 2024).

28 ¹⁷ See, Nev. Secretary of State Elections, Financial Impact of C-01-2023 (LCB Fiscal Analysis Div., Sep. 28, 2023)
at <https://www.nvsos.gov/sos/home/showpublisheddocument/12503/638338310336370000> (accessed March 6,
2024).

1 distinguishes referenda and initiatives. Nevada’s decisional authority provides that “[r]eferendum
2 is the electorate’s power to approve or disapprove already-enacted legislation[.]” *Garvin v. Ninth*
3 *Judicial Dist. Ct.*, 118 Nev. 749, 753, 59 P.3d 1180, 1183 (2002). This Court cannot condone
4 Intervenors’ interpretation, and allow petition circulators to dictate whether or not the petition is
5 an initiative or a referendum simply upon the circulators’ say-so, and without regard to the
6 substantive differences between initiative petitions and referenda.

7 Initiative Petitions and Referendum Petitions are subject to different sets of constitutional
8 and statutory procedures and rules. NRS 295.045, for example, strictly limits the question
9 presented with referenda to “Shall the statute (setting out its title) be approved?” NRS 295.045(3).
10 This limitation does not apply to an initiative. Thus, a circulator seeking to repeal legislation has
11 an interest in bypassing the limitations on referenda, particularly if the legislation sought to be
12 repealed is popular. If the referendum fails, and “a majority of the voters...votes approval of such
13 statute or resolution or any part thereof, such statute or resolution or any part thereof shall stand
14 as the law of the state and shall not be amended, annulled, repealed, set aside, suspended or in any
15 way made inoperative except by direct vote of the people.” NEV. CONST., Art. 19, Sec. 1(3).

16 An opponent of SB 290 has clear tactical incentives to misclassify a referendum on the bill
17 as an initiative. SB 290 is less likely to be repealed by referendum, but its defeat would be assisted
18 through the tools an initiative on “predatory lending” offers. SB 290, sponsored by Nevada’s
19 Democratic Senate Majority and Assistant Majority Leaders, passed by more than a two-thirds
20 supermajority and Nevada’s Republican Governor signed it into law. SB 290’s bipartisan
21 consensus around EWA services is not disputed. But a referendum on SB 290 could not include
22 references to “predatory” or “high-interest” lending, because the bill provides EWA service
23 providers are not lenders and may not charge interest. And were a referendum on SB 290 to fail,
24 the bill’s EWA provisions could not later be repealed without a popular vote. NEV. CONST., Art.
25 19, Sec. 1(3). The relative flexibilities of an initiative are all the more seductive for those who wish
26 to overturn a popular bill. A putative “initiative petition” addressing so-called “predatory lending”
27 will ostensibly appeal to more voters, especially if they have no notice that the Petitions also
28 encompass a popular EWA service the Legislature overwhelmingly approved.

1 In any event, Intervenor's are incorrect that the Petitions "do not change a single word of
2 SB 290[.]" Resp., at 25:18-20. The Petitions explicitly re-define EWA services to be loans, EWA
3 service providers to be lenders, and thereby seek to repeal SB 290's provisions declaring exactly
4 the opposite. SB 290, Sec. 33(1)-(2). Intervenor's concede as much, acknowledging that "the
5 Legislature defined [DailyPay's] transactions one way through a Senate bill, and the people are
6 free to define them another way through direct legislation." Resp., at 13:10-12. But the
7 Constitution mandates that a collective thumbs up or thumbs down on legislation must be achieved
8 through a referendum petition, subject to specific rules and limitations, not to the whims and
9 dictates of petition circulators who, seeking to repeal an otherwise popular legislative act, may
10 find an easier path to repeal by masing the referendum's true nature as an initiative petition.

11 **IV. Conclusion**

12 The Petitions violate the rules and strictures meant to safeguard the initiative and
13 referendum processes, rules meant to ensure that such processes are transparent and fair. If
14 Intervenor's seek to repeal all or part of SB 290, their Petitions must inform voters of that intent
15 and of the interests that are likely to be affected by repealing all or part of SB 290. The Petitions
16 do not satisfy NRS 239.009(2)'s single-subject standard, and are otherwise unlawful and must not
17 be circulated for signature.

18 Dated this 2nd day of March 2024.

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**IN THE FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

NEVADANS FOR FINANCIAL CHOICE, a
Nevada Political Action Committee, and
CHRISTINA BAUER, an Individual,

Plaintiffs,

v.

KATE FELDMAN, an Individual,
STOP PREDATORY LENDING NV, a
Nevada Non-Profit Corporation, and
FRANCISCO AGUILAR, in his Official
Capacity as Nevada Secretary of State,

Defendants.

Case No.: 24OC000181B
Dept. No.: II

**REPLY BRIEF IN SUPPORT OF
CHALLENGE TO STATEWIDE
INITIATIVES S-01-2024 & S-03-2024**

HEARING DATE: March 22, 2024
HEARING TIME: 9:00 a.m.

AND CONSOLIDATED CASES

I. INTRODUCTION

The Proponents of Initiative Petitions S-01-2024 and S-03-2024 (the "Petitions"), Kate Feldman and Stop Predatory Lending NV (collectively "Proponents") seek to misuse Nevada's initiative process. They urge this Court to rubberstamp the Petitions out of deference to the constitutionally-enshrined right of the public to propose direct legislation. But respectfully, it is the Proponents who fail to show respect for that process, joining "together numerous disparate topics into one 'grab-bag' proposal" held together with [little more than] a seductive title designed for voter

appeal." *Rosen v. Deukmejian*, 881 P.2d 1077, 1090 (Cal. 1991) (Musk, J., concurring and dissenting).

But as Plaintiffs Nevadans for Financial Choice and Christina Bauer (collectively "Plaintiffs" or "Financial Choice") demonstrated in their opening brief, as well as this reply, Nevada law plainly forbids what the Proponents propose with these two overbroad Petitions. Neither is limited to a single subject, and that reality cannot be evaded by recasting (a) an excessively generalized topic. Nor can the Proponents escape compliance with providing a forthright description of effect by complaining of how they are limited to 200 words. That excuse only underscores the overbreadth of these two nearly-identical Petitions, how they are not limited to a single subject and how the Petitions fail to disclose the full text of all the statutory changes that they propose.

II. ANALYSIS

A. Nevada Law Protects the Initiative Process from Manipulation.

The Proponents' suggestion that compliance with NRS 295.009 interferes with their right to propose legislation is erroneous. As the Nevada Supreme Court admonishes, "[b]y limiting petitions to a single subject, NRS 295.009 facilitates the initiative process by preventing petition drafters from circulating confusing petitions that address multiple subjects." *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 902, 111 P.3d 1235, 1240 (2006) (emphasis added). After all, unlike the legislative process, which involves hearings and input from public stakeholders, "the initiative process typically does not allow for input in drafting proposed laws." *Las Vegas Taxpayers Accountability Comm. v. City Council*, 125 Nev. 165, 177 n.6, 208 P.3d 429, 437 n.6 (2009).

Thus, "it bears emphasis that proper application and enforcement of the single-subject rule is by no means inconsistent with the cherished and favored role that the initiative process occupies in our constitutional scheme, but on the contrary constitutes an *integral safeguard* against improper manipulation or abuse of that process." *Senate of State of Cal. v. Jones*, 988 P.2d 1089, 1099 (Cal. 1999) (emphasis added). After all, "[t]he single-subject rule imposes no barrier to the presentation of *any* subject to the electorate, but simply precludes drafters from combining, *in a single initiative*,

provisions that are not reasonably germane to a common theme or purpose. Unrelated proposals always may be placed before the voters through separate initiative measures, which may be circulated contemporaneously, affording the electorate the choice of approving all, some, or none of the distinct proposals.” *Id.* (emphasis in original). The single-subject rule thus “helps both in promoting informed decisions and in preventing the enactment of unpopular provisions by attaching them to more attractive proposals or concealing them in lengthy, complex initiatives (i.e., logrolling).” *LTAC*, 125 Nev. at 176-77, 208 P.3d at 437.

The Proponents’ Petitions are just the type of manipulation of the initiative process that NRS 295.009 is designed to preclude. These Petitions abuse the process by cobbling together a host of subjects and mislead the public under the attention-grabbing veneer of supposedly regulating “payday loans.”

1. These Petitions Violate the Single-Subject Requirement.

As outlined in Plaintiffs’ opening brief, these Petitions violate NRS 295.009(1)(a) because they fail to embrace “but one subject and matters necessarily connected therewith and pertaining thereto.” NRS 295.009(1)(a). As the Nevada Supreme Court notes, when analyzing the single-subject requirement, this Court must determine the proposed initiative’s purpose by looking at its title, textual language and the Proponents’ arguments. *LTAC*, 125 Nev. at 180, 208 P.3d at 439. Oddly, both of these Petitions share the exact same seductive title: “Preventing Predatory Payday and Other Loans Act” (EAC at Ex. 1 p.1, Ex. 2 p.2). And both descriptions of effect proclaim that each “addresses high-interest lending practices by establishing maximum interest rates charged to consumers . . .” (*Id.* at Ex. 1 p. 14, Ex. 2 p.11). But the actual terms of these Petitions confess something much different and broader than the payday loan bougeyman. As previously outlined, the Proponent’s first proposal, S-01-2024, contains separate sections (Sections 17 & 18) addressing writs of garnishment and writs of execution. Those provisions have nothing to do with any form of loans, payday or otherwise. Nevada’s laws on writs of garnishment and execution concern the manner of collection of any judicial judgment.

The Proponents confirm their manipulative efforts when, just two days before the deadline for legal challenges to S-01-2024, they filed Petition S-01-2024, repeating verbatim all other terms,

1 but now dropping the writ provisions (FAC at Ex. 2). But effectively conceding the single-subject
2 violation for S-01-2024 by dropping these provisions does nothing to salvage S-03-2024's
3 problems. As Section 8(a) of both Petitions specify, they reach ten distinct subjects of differing and
4 unrelated transactions, and then even specify that the Petitions' reach "shall not be limited to" even
5 those differing items. (FAC at Ex. 1 §8, Ex. 2 at §8). On top of that as Section 8(10) says, the
6 Petitions also extend to any "(l)loans made by a bank, savings bank, savings and loan association,
7 or credit union organized, chartered or holding a certificate of authority to do business under the
8 laws of this state."

9 These Petitions are not limited to any "consumer" transactions as Proponents falsely
10 advertise. They cover wide swaths of divergent financial transactions for which potential signers
11 are never informed. Again, the public is repeatedly misled over and over again when Proponents
12 tell the public that these Petitions concern "payday" loans or lenders. But neither Petition is limited
13 to the subject of deferred deposit loans (so-called payday loans), which are already governed by
14 NRS Chapter 604A.

15 The Proponents now tellingly propose to ignore the title of their Petitions, as well as their
16 repeated reference to "payday lenders" to argue that these grabbag of various provisions can all be
17 harmonized under the generic rubric of "consumer debt relief" or their "fiscal well-being,"
18 (Omnibus Response at p.9; line 9 & p.11; line 11). But that is an unoriginal and forbidden attempt
19 to "circumvent the single-subject rule by phrasing the proposed law's purpose or object in terms of
20 'excessive generality.'" *LPTAC*, 125 Nev. at 181, 208 P.3d at 439 (quoting *Harbor v. Deukmejian*,
21 742 P.2d 1290, 1393 (Cal. 1987)). In *LPTAC*, the Supreme Court invalidated a proposed initiative
22 to require voter approval for the expenditures on local redevelopment projects as violating NRS
23 2953009's single-subject requirement because an initiative proponent is not allowed to circumvent
24 the law by joining together discrete subjects under an overly general topic like "voter approval for
25 major redevelopment decisions." *Id.*, 208 P.3d at 440.

26 The *LPTAC* Court endorsed the numerous California authorities which have rejected
27 initiative petitions that sought to circumvent the single-subject rule with just the type of excessive
28 generality that the Proponents employ here. In *Harbor*, 742 P.2d at 1393-94, the court invalidated

a petition that sought to impose sweeping changes under the supposed single-subject of "local affairs" to justify revisions to over 20 different code sections. As the court explained, such a topic was too generic to comply with the single-subject rule. *Id.* Likewise, in *State Senate of California*, 988 P.2d at 1100-02, the court invalidated an initiative petition for violating the single-subject requirement because it sought to include distinct provisions under the general subject of "voter involvement" or "voter approval of political issues" and that is a topic of "excessive generality." The same occurred in *Chemical Specialties Manufacturers Ass'n., Inc. v. Deukmejian*, 278 Cal. Rptr. 128, 133 (Ct. App. 1991), where the court rejected a petition that purported to reduce toxic pollution, protect health and safety standards in nursing homes and fight other alleged harms under the purported subject of "truth in advertising." The court explained that such a so-called "subject" was too generic and "so broad that a virtually unlimited array of provisions could be considered germane thereto and joined in this proposition, essentially obliterating the" single-subject rule requirement. *Id. Accord Wagner v. Edeen*, 948 N.W.2d 244, 254-55 (Neb. 2020) (invalidating a proposed initiative for "cannabis legalization" that effectively included at least 8 actual subjects under single-subject requirement because the rule cannot be "circumvented" by selecting a topic that is "so broad" as to evade "meaningful review").

The Proponents' proffered subjects of "debt relief" or "financial well being" are of the same defective ilk. Virtually anything relating to the subject of money — taxes, gambling, student loans, just to name a few — could all be crammed within such an overly generalized subject matter. This is precisely what the single-subject rule forbids. And, the Proponents' embrace of the initiative petition approved in *Holton v. Nevada Voters Plus PAC*, 138 Nev. Adv. Op. 45, 312 P.3d 309 (2022) wildly misses the mark. In *Holton*, each of the initiative's provisions were functionally related and germane to each other in furthering the initiative's goal of changing the manner in which partisan officeholders are elected. As the divided Supreme Court determined, that petition did not present multiple distinct subjects. Each and every one of its provisions facilitated the method by which voters chose their partisan representatives. *Id.* at 314. The fact that there were two steps in the election process — the primary election to winnow the candidates followed by the general election to choose the ultimate winner — did not constitute two separate subjects as the opponents

1 of that petition erroneously contended. Instead, as a majority of the Supreme Court recognized, all
 2 of that petition's provisions worked in harmony to govern the singular function by which the
 3 partisan officeholders are elected. *Id.*

4 The Proponents effectively confess their single-subject violation here when they insist (with
 5 emphasis no less) that nothing in the law "requires each provision of an initiative to be functionally
 6 related and germane to each other; rather they need only be functionally related and germane to the
 7 initiative's overall policy goal." (Omnibus Response at p.12) (emphasis in original). They are
 8 fundamentally wrong. NRS 295.009(2) specifies that a petition embraces a single subject "*if the*
 9 *parts of the proposed initiative or referendum are functionally related and germane to each other*
 10 *in a way that provides sufficient notice of the general subject of, and of the interests likely to be*
 11 *affected by, the proposed initiative or referendum."* (emphasis added); see *Hellon*, 138 Nev. Adv.
 12 Op. 45, 312 P.3d at 314 (holding that courts must assess "*if each provision is functionally related*
 13 *and germane to each other and the initiative's purpose or subject"*) (emphasis added). Indeed, as
 14 the court in *California Trial Lawyers Ass'n v. Eu* held, the suggestion "that any two initiative
 15 provisions, no matter how functionally unrelated, satisfy the single-subject rule, so long as they
 16 have some effect on the topic contained in the initiative" is untenable. *Chemical Specialties*, 278
 17 Cal. Rptr. at 132 (describing *California Trial Lawyers Ass'n v. Eu*, 245 Cal. Rptr. 916, 921 (Cr.
 18 App. 1988)). That approach – which Proponents advance here – "would permit the joining of
 19 enactments so disparate as to render the constitutional single-subject limitation nugatory."
 20 *California Trial Lawyers*, 245 Cal. Rptr. at 92.)

21 Unremarkably, other courts have consistently rejected Proponents' tactic as well. See
 22 *American Hotel & Lodging Ass'n v. City of Seattle*, 432 P.3d 434, 441-42 (Wash. Ct. App. 2018)
 23 (All provisions of initiative must "be germane not only to the general title but also to one another");
 24 *In re Title, Ballot Title & Submission Clause for 2021-2022 No. 16*, 489 P.3d 1217, 1221-22 (Colo.
 25 2021) (proposed initiative's broad concept of "animal cruelty" as a unifying label to justify inclusion
 26 of disparate provisions is just the type of "vague subject" that "the single subject requirement was
 27 intended to prevent."); *In re Ballot Title & Submission Clause for 2005-2006 No. 74*, 136 P.3d 237,
 28 240 (Colo. 2006) (initiative's purported subject of "[l]imiting government spending" is too broad

1 and general to satisfy the single-subject requirement as it permits the joining of unrelated provisions
2 into a single initiative in violation of the single-subject requirement).

3 Here again, as the Proponents ultimately acknowledge, the various provisions of these two
4 Petitions do not functionally relate to each other, let alone in a way so as to alert the public of the
5 interests impacted. Rather, as the Proponents' own arguments demonstrate, the only way in which
6 they can cobble all of these various provisions together is by resorting to an excessively generalized
7 topic such as "debt relief" and "financial wellbeing." And that is precisely what the single-subject
8 rule precludes. *LVTAC*, 125 Nev. at 181, 208 P.3d at 439.

9 *2. The Descriptions of Effect are Deceptive and Deficient.*

10 Beyond violating NRS 295.009(1)(a)'s single-subject rule, these Petitions also violate the
11 statute's requirement for a valid description of effect. NRS 295.009(1)(b). The Proponents are
12 correct about one thing: that as the sponsor of these Petitions it is their prerogative to prepare the
13 statutorily required description of effect that the public reads immediately before considering
14 whether to sign the petition. (Omnibus Response at 14-17.) But it is precisely because Nevada law
15 grants the sponsor that right, they must act forthrightly in disclosing what the proposed petition
16 actually does.

17 As the Nevada Supreme Court has explained, the description of effect "is significant as a
18 tool to help 'prevent voter confusion and promote informed decisions.'" *LVTAC*, 125 Nev. at 183,
19 208 P.3d at 441 (quoting *Nevadans for Nev. v. Beers*, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006)).
20 And, while the Proponents' description "need not be the best possible statement of the proposed
21 measure's intent," it nonetheless must still be "straightforward, succinct, and non-argumentative."
22 *Id.* (quoting *Hecht Gaming, Inc. v. Sec'y of State*, 122 Nev. 877, 889, 141 P.3d 1224, 1232 (2006)).
23 What Nevada law requires is that the Petitions' sponsor honestly tell the public what they would
24 actually do (if enacted).

25 Consider again the description for proposed Petition 5-01-2024, where Proponents propose
26 substantial changes to Nevada law concerning writs of garnishment and writs of execution. Under
27 existing law, NRS 31.105 declares a number of benefits as exempt from execution, including social
28 security and veterans benefits among others. Without mentioning these substantial changes, the

Proponents claim that their proposal is preferable to those existing exemptions because they are proposing an even larger – \$5,000 – overall exemption (Omnibus Response at 9). According to the Proponents, since they believe that this trade off is preferable for the public, their description need not disclose these substantial changes. Respectfully, the Proponents have the law exactly backwards. It is for the public to decide whether this trade off is preferable, and they can only do so when they are actually informed about the significant legal changes that the Petition is proposing. Proponents plainly realize that the voters might question or even disagree with that proposed trade off and thus Proponents want to conceal it by omission.

And the description of effect for the second Petition (S-03-2024) fares no better. Both Petitions falsely pretend that they reach only “consumer” financing. But both Petitions are much broader, reaching an untold number of financial transactions including loans from ordinary banks/financial institutions. (FAC Ex. 1 §8(10), Ex. 2 §8(10)). For just one example, they reach “[r]efund anticipation loans,” which are not limited to “consumers.” *Id.* §8(4). Indeed, Nevada law defines “consumer” or “consumer credit” under existing law as being (limited to natural) persons. NRS 604A.036 & 604C.060. The Proponents want to pretend as though these Petitions’ concerns are directed at so-called “payday” loan or lenders when the reality is otherwise.

Another fatal failure, but hardly the only one, is Proponents’ failure to address how these Petitions would constitute Nevada opting out of the Federal Depository Institution’s Deregulation and Monetary Control Act of 1980. (FAC Ex. 1 §14, Ex. 2 §14). This is a serious and substantial issue. That 40-year-old federal law is designed to enhance competitive equality for FDIC-insured, state-chartered banks and credit unions by affording them the same interest rate authority as national banks have. The Petitions’ proposed opt out now 40 years later would have serious implications for those institutions. Here again, the Proponents fail to understand the purpose of the statutorily-required description of effect when they claim that there is no need to disclose such a drastic change because doing so supposedly would benefit consumers. But the point of the description of effect is not to “tell” what the Proponents want – it is to inform potential signers what the Petition would actually do so that they can make an informed decision. Does Nevada really want to opt out of a federal law to create competitive inequity for in-state banks? That is not only a separate subject

1 matter, but something that voters must know about. While Proponents have the right to prepare the
2 description, they do not have the right to omit the material aspects of what they are proposing simply
3 because the Proponents think they know what is best for voters.

4 **B. These Petitions fail to Include "The Full Text" of What they Propose.**

5 Finally, Proponents boast that they easily satisfy Article 19, Section 3 of the Nevada
6 Constitution – which mandates that any "initiative petition shall include the full text of the measure
7 proposed" – by simply reciting the terms of their newly-proposed NRS Chapter 604D in the
8 Petitions. But respectfully, that is not the extent of the "full text" requirement, particularly
9 considering the massive overhaul of multiple chapters of the NRS that these Petitions would enact.
10 "The purpose of the full text requirement is to provide sufficient information so that registered
11 voters can intelligently evaluate whether to sign the initiative petition and to avoid confusion."
12 *Mervyn's v. Reyes*, 81 Cal. Rptr. 2d 148, 151 (Ct. App. 1999). The point of mandating the "full text"
13 is to show the voters not just what is being added by a proposed petition, but also how the petition,
14 if enacted, would change or repeal other statutes. See *Kerr v. Bradbury*, 89 P.3d 1227, 1238 (Or.
15 Ct. App. 2004) ("There is no dispute that the petition sets out only the text of the amendatory
16 wording. It does not contain the text of either ORS 536.067 or ORS 659.855 as they would read if
17 the petition were to be enacted" in violation of the "full text" requirement and thus proposed
18 initiative was invalid).

19 The Proponents' protest – that it is too burdensome and would take volumes of pages to
20 actually show the voters how these Petitions would change/amend/repeal the other provisions of
21 the Nevada Revised Statutes – only confirms the improper and excessive breadth of these Petitions.
22 The voters are entitled to actually see the sweeping changes to numerous and distinct provisions of
23 the NRS so that they can understand, in deciding whether to lend their support. Consider just one
24 example: the changes that these Petitions would have upon NRS Chapter 97, which governs retail
25 installment sales of goods and services. The Nevada legislature, through NRS 97.285, specifies that
26 the "provisions of this chapter governing retail installment transactions *are exclusive*, and the
27 provisions of any other statute do not apply to retail installment transactions governed by this
28

chapter. If there is a conflict between the provisions of this chapter and any other statute, *the provisions of this chapter control.*" (emphasis added).

But potential signers of these Petitions could never understand the wholesale changes that they would have upon NRS Chapter 97, because the Proponents do not actually show and include the actual and "full text" of how they are rewriting the exclusivity in NRS 97.285. These Petitions merely state that they would apply to retail installment transactions "notwithstanding NRS 97.285 or any other provision of law." (FAC Ex. 1 §8(8), Ex. 2 §8(8)). Yet that fails to show the voters the textual change and how these Petitions would eliminate the legislatively-declared "exclusivity" of Chapter 97. Of course, this is just one of the many textual omissions these Petitions make because they are so overbroad in seeking to reach a number of distinct subjects and NRS provisions¹

III. CONCLUSION

For all the foregoing reasons, both Petitions fail under the law and should be enjoined.

AFFIRMATION

The undersigned does hereby affirm that this document does not contain the social security number of any person.

DATED this 8th day of March 2024.

PISANELLI BICE PLLC

By: 

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¹ Indeed, the Proponents recognized this requirement when they proposed changes to NRS 21.105 and NRS 21.090 in Petition S-01-2024 at Sections 17 and 18. The Proponents simply did not want to undertake that same exercise in showing the voters the extensive changes brought by the Petitions' earlier sections because the visualization of all those changes would truly show the public the massive rewrite these Petitions proposed to multiple different chapters of the NRS.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC and that, on this 8th day of March 2024, pursuant to NRCP 5(b), I served a true and correct copy of the above and foregoing **REPLY BRIEF IN SUPPORT OF CHALLENGE TO STATEWIDE INITIATIVES S-01-2024 & S-03-2024**, via electronic mail, per the February 22, 2024 Stipulation and Scheduling Order of the Court, to the following:

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10 **IN THE FIRST JUDICIAL DISTRICT COURT**
11 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

12 **PREFERRED CAPITAL FUNDING -**
13 **NEVADA, LLC, a Nevada limited liability**
14 **company, and ALLIANCE FOR**
15 **RESPONSIBLE CONSUMER LEGAL**
16 **FUNDING, an Illinois nonprofit corporation,**

17 **Plaintiffs,**

18 **vs.**

19 **FRANCISCO V. AGUILAR, in his official**
20 **capacity as NEVADA SECRETARY OF**
21 **STATE, and KATE FELDMAN, an individual,**

22 **Defendants,**

23 **and**

24 **STOP PREDATORY LENDING NV, a Nevada**
25 **nonprofit corporation,**

26 **Intervenor-Defendant.**
27
28

AND ALL RELATED ACTIONS.

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ORIGINAL CASE NO. 24 OC 00023 1B

CONSOLIDATED WITH

LEAD CASE NO. 24 OC 00018 1B
DEPT. NO. II

**REPLY OF PREFERRED CAPITAL
FUNDING – NEVADA, LLC AND
ALLIANCE FOR RESPONSIBLE
CONSUMER LEGAL FUNDING IN
SUPPORT OF COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF CHALLENGING INITIATIVE
PETITIONS S-01-2024 and S-03-2024**

Date of Hearing: March 22, 2024
Time of Hearing: 9:00 a.m.

1 Plaintiffs Preferred Capital Funding - Nevada, LLC, a Nevada limited liability company
2 ("Preferred"), and Alliance For Responsible Consumer Legal Funding, an Illinois nonprofit
3 corporation ("ARC"), by and through their attorneys, Joshua H. Reisman, Esq., Elizabeth M.
4 Sorokac, Esq., and Michael R. Kalish, Esq., of the law firm Reisman Sorokac, hereby submit this
5 Reply In Support of their Complaint for Declaratory and Injunctive Relief Challenging Initiative
6 Petitions S-01-2024 and S-03-2024 ("Reply"). This Reply is based upon the Memorandum of
7 Points and Authorities below, all papers and pleadings on file in this matter, and any oral
8 argument heard by the Court on March 22, 2024.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. INTRODUCTION**

11 **A. Procedural History.**

12 On January 5, 2024, and January 24, 2024, Defendant Kate Feldman, an individual ("Ms.
13 Feldman"), filed Initiative Petitions S-01-2024 and S-03-2024 (collectively, "Petitions"),
14 respectively. On January 29, 2024, Preferred and ARC filed their Complaint for Declaratory and
15 Injunctive Relief Challenging Initiative Petitions S-01-2024 and S-03-2024 ("Complaint"). In
16 January and February 2024, various complaints challenging the validity of the Petitions were filed
17 by other parties as separate actions. On or about February 22, 2024, Preferred, ARC and the other
18 parties challenging the Petitions entered into a Stipulation and Scheduling Order of the Court. For
19 purposes of judicial efficiency, among other reasons, they stipulated to the consolidation of the
20 various actions into one action before this Court and to the intervention of Stop Predatory Lending
21 NV, a Nevada nonprofit corporation ("SPL"), as a defendant. On February 28, 2024, Ms. Feldman
22 and SPL (collectively, "Defendants") filed their Omnibus Response ("Response") to Plaintiffs'¹
23 Complaints.

24 ///

25 ///

26 ¹ Plaintiffs in the consolidated action include: Preferred; ARC; Nevada for Financial Choice, a Nevada
27 political action committee; Christina Bauer, an individual; Dailypay, Inc., a Delaware corporation; Activehours, Inc., a
28 Delaware corporation; and Stacy Press, an individual.

1 **B. Preferred and ARC are consumer litigation funders; they are not lenders**
2 **providing loans that create consumer debt.**

3 Preferred is a licensed consumer litigation funder in Nevada. ARC is an industry coalition
4 established to preserve consumer litigation funding, as a choice, for individuals who have suffered
5 economic loss from an accident and have a pending legal claim. Consumer litigation funding
6 provides financial support (for living or other expenses) to a plaintiff in a personal injury case
7 through a nonrecourse transaction that creates a lien, only, on the plaintiff's potential recovery.
8 The transaction requires the plaintiff's attorney to assist with the agreement governing the
9 transaction. These transactions are unique to litigation and the needs of the injured and are very
10 different from the consumer loans otherwise addressed in the Petitions.

11 In 2019, the Nevada Legislature enacted a separate chapter of the Nevada Revised Statutes
12 (Chapter 604C) to define and regulate consumer litigation funding—because the transactions did
13 not fit into any of the categories of loans covered by existing Nevada law. Nevada was clear that
14 consumer litigation funding transactions conforming to NRS Chapter 604C are not loans and are
15 not subject to any of the provisions of laws or statutory or regulatory provisions governing loans.
16 See NRS § 604C.220. The funds are provided to an individual on a nonrecourse basis, and the
17 individual (a personal injury plaintiff) assigns to the funder a contingent right to receive an amount
18 of the potential proceeds of a settlement, judgment, award, or verdict obtained in the individual's
19 legal claim. The nonrecourse transaction does not create a debt for the individual; and the funder
20 only receives repayment in the event the individual recovers funds in his or her case.

21 Consumer litigation funders, like Preferred, are not predatory. They provide an option to
22 injured individuals that allows them to maximize the value of their legal claim. Without readily
23 available funds, for living and other expenses, individuals may be forced to settle their legal
24 claims, early, for far less than their true value. This option allows them to pay their rent and take
25 care of their families while they are unable to work and are still pursuing their claim for just
26 compensation—which can take years to resolve. Consumer litigation funding is a highly valued
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1 option for injured plaintiffs embroiled in litigation.² Preferred and ARC have and will continue to
2 advocate for this crucial option.

3 **C. The Petitions are multi-subject—with misleading descriptions of effect.**

4 The Petitions wish to regulate multiple industries, multiple types of transactions and
5 multiple limitations and exemptions related to the collection of judgments and/or liens. The
6 Response fails to establish that loans and consumer litigation funding transactions are the same
7 subject and are functionally related and germane to each other. Instead, the Defendants ask the
8 Court to take an even broader view of the purpose and effect of the Petitions. They argue that the
9 separate and unrelated category of consumer litigation funding (already statutorily defined as not a
10 loan) is functionally related and germane to the consumer loans the Petitions seek to regulate
11 because they are both consumer focused. However, such a broad view of the Petitions' purposes is
12 not permitted and does not cure the multiple subjects addressed by the Petitions.

13 In the descriptions of effect, Defendants pick and choose select industries and types of
14 transactions covered by the Petitions³. Defendants do not even attempt to explain how consumer
15 litigation funding transactions are addressed in the Petitions' descriptions of effect. They offer no
16 explanation because consumer litigation funding is not even mentioned. Defendants instead point
17 the finger at Plaintiffs, claiming it would be impossible to address all of their concerns in the
18 descriptions of effect. However, by drafting multiple-subject Petitions, Defendants can only
19 blame themselves for being unable to draft descriptions of effect that are not misleading to voters.
20 Consumers have a right to know how services upon which they rely will be affected. Those
21
22

23 ² See <http://arclealfundin.org/testimonials/nevada-leal-fundin/> (testimonials of Nevada consumer
24 litigation funding clients).

25 ³ The Petitions seek to cover: (1) deferred deposit loans/payday lenders; (2) high-interest loans; (3) title
26 loans; (4) refund anticipation loans; (5) consumer litigation funding transactions; (6) installment loans; (7) retail
27 installment transactions; (8) loans secured by a life insurance of annuity contract; (9) loans made by a bank, savings
28 bank, savings and loan association, or credit union; and (10) earned wage access services. The Petitions' descriptions
of effect only highlight two of the industries by name: deferred deposit transactions/payday loans and title loans. The
descriptions then attempt to include the remaining industries through language related to consumer loans and other
loan types dependent on future earnings and income, which is inaccurate and misleading.

1 service providers have a right to protect themselves and their industries from misleading,
2 unjustifiable business interference.

3 The purpose of the single-subject requirement is to require proponents of initiatives to
4 circulate petitions with single subjects that are clear and straightforward. It is further required that
5 petitioners address separate subjects in separate initiative petitions. That is the law of the state of
6 Nevada. It is not "absurd" to require the Defendants to comply with Nevada law.

7 II. ARGUMENT

8 A. The Petitions embrace more than one subject, in violation of NRS § 9 295.009(1)(a).

10 A petition for initiative or referendum is required to "[e]mbrace but one subject and
11 matters necessarily connected therewith and pertaining thereto." NRS § 295.009(1)(a). "[A]
12 petition for initiative or referendum embraces but one subject and matters necessarily connected
13 therewith and pertaining thereto, if the parts of the proposed initiative or referendum are
14 functionally related and germane to each other in a way that provides sufficient notice of the
15 general subject of, and of the interests likely to be affected by, the proposed initiative or
16 referendum." NRS § 295.009(2). "In considering single-subject challenges, the court must first
17 determine the initiative's purpose or subject and then determine if each provision is functionally
18 related and germane to each other and the initiative's purpose or subject." *Helton v. Nev. Voters*
19 *First Pac*, 512 P.3d 309, 314 (Nev. 2022). "To determine the initiative's purpose or subject, this
20 court looks to its textual language and the proponents' arguments." *Las Vegas Taxpayer*
21 *Accountability v. City Council of Las Vegas*, 125 Nev. 165, 180, 208 P.3d 429, 439 (2009). "The
22 court also will look at whether the description of effect articulates an overarching purpose and
23 explains how provisions relate to a single subject." *Helton*, 512 P.3d at 314.

24 1. The Petitions excessively generalize their purposes, in violation of NRS § 25 295.009(1)(a).

26 "[A]n initiative proponent may not circumvent the single-subject rule by phrasing the
27 proposed law's purpose or object in terms of 'excessive generality.'" *Las Vegas Taxpayer*
28 *Accountability*, 125 Nev. at 181, 208 P.3d at 439. An initiative petition with an excessively

1 general purpose "can lead to a violation of the single-subject requirement in NRS § 295.009(1)(a),
2 when it masks the multifarious and distinct subjects an initiative impermissibly covers." *Prevent*
3 *Sanctuary Cities v. Haley*, 2018 Nev. Unpub. LEXIS 442, at *7 (2018) (unpublished disposition);
4 *see also Howes v. Brown*, 235 P.3d 1071, 1076 (Colo. 2010) ("A proponent's attempt to
5 characterize an initiative under some general theme will not save the initiative from violating the
6 single-subject rule if the initiative contains multiple subjects."); *Gonzalez-Estay v. Lamm (In re*
7 *Title & Ballot Title & Submission Clause for 2005-2006 #55)*, 138 P.3d 273, 278 (Colo. 2006)
8 ("[A]n initiative grouping distinct purposes under a broad theme will not satisfy the single subject
9 requirement."); *State ex rel. Wagner v. Evnen*, 948 N.W.2d 244, 254 (Neb. 2020) ("As two other
10 jurisdictions have stated in a similar context, the single subject requirement may not be
11 circumvented by selecting a [general subject] so broad that the rule is evaded as a meaningful
12 constitutional check on the initiative process." (internal quotations omitted)).

13 The Petitions' stated purposes are:

14 combatting predatory payday ***lending*** and other high-cost ***loans***; ensuring that
15 out-of-state ***lenders*** cannot flout Nevada law by making payday ***loans***, other
16 ***loans***, or transactions subject to this chapter at unlawful rates to Nevada residents;
17 and protecting law-abiding ***lenders*** from unfair competition by predatory, out-of-
state entities. Petitions at 1 (emphasis added).

18 The Petitions set their sights on "predatory" lending in general—whatever that means. And
19 Defendants' definition is so expansive that it somehow includes consumer litigation funding,
20 which is not lending, which is not predatory and which is already subject to limitations on the
21 amounts that may be charged. *See* NRS § 604C.310. Moreover, consumer litigation funding
22 clients' savings and earnings are in no way implicated. The funding only creates a lien on a
23 litigation claim and is nonrecourse.

24 Defendants further generalize the Petitions' purposes, in their Response, by re-
25 characterizing the same as (i) ensuring Nevadans have better debt protections, (ii) an overall
26 program of consumer debt relief, (iii) alleviating the worst effects of our modern culture of
27 consumer debt, and (iv) alleviating the experience of consumer debt. (*See* Response at 1, 9 & 12.)
28

1 These stated purposes are extremely generalized—now encompassing "consumer debt" in its
2 entirety. But consumer litigation funding does not contribute in any way to consumer debt – no
3 matter how broadly defined. It is not a loan and it does not impact a consumer's finances. It is
4 nonrecourse and is limited to an individual litigation recovery.

5 Defendants' excessively generalized purposes are not permitted under NRS § 295.009.

6 **2. Consumer litigation funding is its own distinct subject.**

7 The single-subject requirement "facilitates the initiative process by preventing petition
8 drafters from circulating confusing petitions that address multiple subjects." *Nevadans for the*
9 *Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d 1235, 1240 (2006). If
10 petitioners want to address multiple subjects, the single-subject requirement "simply requires
11 petitioners to address separate subjects in separate petitions." *Id.* at 905, 141 P.3d at 1243. Courts
12 have found that "[a] petition includes more than one subject if its text relates to more than one
13 subject and has at least two distinct and separate purposes which are not dependent upon or
14 connected with each other." *In re TITLE*, 900 P.2d 104, 109 (Colo. 1995). Whether subjects are
15 connected or related "cannot be defined so broadly that it allows the inclusion in a single petition
16 of two or more subjects that have only a marginal relationship to one another, which might
17 confuse or mislead voters, or which could place them in the untenable position of casting a single
18 vote on two or more dissimilar subjects." *Weiner v. Attorney General*, 484 Mass. 687, 691, 144
19 N.E.3d 886, 892 (2020).

20 Here, the Petitions' generalized subjects of "predatory lending" and "consumer debt relief"
21 have no connection with consumer litigation funding. These catch-all phrases merely seek to
22 mask the dissimilarity. The Nevada legislature has made it clear that consumer litigation funding
23 transactions are not loans. See NRS § 604C.220(2). Indeed, such transactions are not subject to
24 any statutory or regulatory provision that governs loans. *Id.* Consumer litigation funding
25 companies are not lenders. See NRS §§ 604C.300 through 604C.400. Consumer litigation
26 funding transactions are nonrecourse transactions made by Nevada licensed consumer litigation
27 companies. See NRS § 604C.100. Such funding is only available when a consumer has a pending
28

1 legal claim and a right to assign the potential proceeds from the same. *See* NRS § 604C.100. The
2 consumer litigation funding contract must be written in clear and comprehensible language that is
3 understandable by an ordinary layperson and must contain written acknowledgements from the
4 consumer's attorney. *See* NRS § 604C.350. The amount funded pursuant to such contracts cannot
5 exceed \$500,000.00 and charges may not be assessed at a rate in excess of 40 percent annually.
6 *See* NRS §§ 604C.100 and 604C.310.

7 Accordingly, consumer litigation funding is not lending; it does not create a loan; it is not
8 predatory; and it does not create consumer debt. *See* Julia Kagan, *Consumer Debt: Understanding*
9 *the Pros and Cons*, Investopedia October 29, 2021,
10 <https://www.investopedia.com/terms/c/consumer-debt.asp#What%20Is%20Consumer%20Debt>.

11 As consumer litigation funding is distinct from lending, voters will lack sufficient notice that
12 personal injury plaintiffs will also be impacted by the Petitions.

13 Defendants cannot support their position that loans and consumer litigation funding
14 transactions are the same functionally related subject. Accordingly, they attempt to blur the lines
15 by arguing they are free to redefine consumer litigation funding transactions as loans through the
16 Petitions. Defendants' position would eviscerate the single-subject requirement, however, by
17 allowing petitioners to manufacture single subjects through expansive definitions. Moreover, as a
18 matter of common sense, redefining language to suit one's needs is inherently confusing and
19 misleading: it is deemed "Orwellian" for a reason. Voters will not realize that when Defendants
20 use the term loan, what they really mean is "loanish."

21 This Court must determine whether there is any *functional relationship* between consumer
22 litigation funding transactions and loans based on the current law and definitions—not as drafted
23 within the Petitions. The answer is no. By seeking to regulate consumer litigation funding
24 transactions along with the unrelated category of loans, the Petitions fail to provide sufficient
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1 notice to voters that consumer litigation funding transactions are being affected. As a result,
2 voters will be confused and misled.⁴

3 **B. The descriptions of effect misrepresent the Petitions' purposes, in violation of**
4 **NRS § 295.009(1)(b).**

5 A petition for initiative or referendum is required to "[s]et forth, in not more than 200
6 words, a description of the effect of the initiative or referendum if the initiative or referendum is
7 approved by the voters." NRS § 295.009(1)(b). The purpose of the description of effect is to
8 "prevent voter confusion and promote informed decisions." *Nevadans for Nev. v. Beers*, 122 Nev.
9 930, 939, 142 P.3d 339, 345 (2006) (quoting *Campbell v. Buckley*, 203 F.3d 738, 746 (10th Cir.
10 2000)). "The importance of the description of effect cannot be minimized, as it is what the voters
11 see when deciding whether to even sign a petition." *Coal. for Nev.'s Future v. RIP Commerce*
12 *Tax, Inc.*, 2016 Nev. Unpub. LEXIS 153, at *5 (2016) (unpublished disposition). "[A] description
13 of effect must identify what the law proposes and how it intends to achieve that proposal." *Educ.*
14 *Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 42, 293 P.3d 874, 879 (2013). A
15 description of effect, including the title of the petition, must be a "straightforward, succinct, and
16 nonargumentative summary of an initiative's purpose and how that purpose is achieved." *Id.* at 48,
17 293 P.3d at 883 (quoting *Las Vegas Taxpayer Accountability*, 125 Nev. at 183, 208 P.3d at 441).

18 Petition signers "must be informed at the time of signing of the nature and effect of that
19 which is *proposed*." *Stumpf v. Lau*, 108 Nev. 826, 833, 839 P.2d 120, 124 (1992). A description
20 of effect must not "misrepresent what the initiative will accomplish and how it intends to achieve
21 those goals." *Educ. Initiative PAC*, 129 Nev. at 42, 293 P.3d at 883. A description of effect *is*
22 *invalid under NRS § 295.009(1)(b) when it fails to include the effects of a petition. See Las*
23 *Vegas Taxpayer Accountability*, 125 Nev. at 183-84, 208 P.3d at 441 (holding that a description of
24 effect was insufficient because it failed to accurately inform voters of the consequences that would
25 result if the measure passed). The court must take a "holistic" approach to determine whether a

26 ⁴ Similarly, the regulation of consumer litigation funding transactions has no functional relationship with the
27 other separate subjects within the Petitions, including the opt-out provisions with respect to the Depository Institutions
28 Deregulation and Monetary Control Act of 1980, the wage garnishment restrictions, and waiver of civil immunity.
(See Petitions, at 6, 10-12 & 18.)

1 description of effect complies with NRS § 295.009(1)(b). *See Educ. Initiative PAC*, 129 Nev. at
2 48, 293 P.3d at 883.

3 The descriptions of effect in the Petitions are misleading for both what they include and
4 what they omit. They indicate that the Petitions are addressing "high-interest lending practices"
5 and that they seek to place an interest-rate cap on "consumer loans; deferred-deposit transactions
6 ('payday loans'); title loans; and other loan types" (*See Petitions at 19.*) However, consumer
7 litigation funding is not a loan or a lending practice; and the descriptions of effect fail to mention
8 consumer litigation funding transactions are being affected. Voters will not recognize that their
9 decision also impacts consumer litigation funding—that it might limit their access to a needed
10 lifeline should they be injured in an accident.

11 Defendants also ask the Court to review the descriptions of effect solely from the
12 viewpoint of consumers. This is contrary to the holistic review that the Court must conduct.
13 Consumers' views are not monolithic. They have different levels of education, outlooks and
14 experiences. Some may have even used litigation funding to keep them afloat in a prior lawsuit
15 and thus realize that it is not a loan—it is not predatory. *They* would not assume that litigation
16 funding is being affected under the Petitions. This Court must consider *all of the ways* in which
17 the Petitions may be misleading. The Court should not confine its review to its personal view of
18 what the average consumer might subjectively think. This is not the standard. And Defendants
19 have not pointed to any case that suggests it is.

20 Finally, the misrepresentations in the descriptions of effect are not cured by the fact that
21 copies of the Petitions may be presented to voters at the time of signing. Determination by the
22 Court, pursuant to NRS § 295.009(1)(b), is based on the Court's holistic review of the description
23 itself. Similarly, the invalid descriptions of effect are not magically remedied by the fact that
24 opposition campaigns will have the opportunity to educate the public. NRS § 295.009(1)(b) does
25 not require Plaintiffs to correct Defendants' misrepresentations in the descriptions of effect during
26 the opposition campaign.
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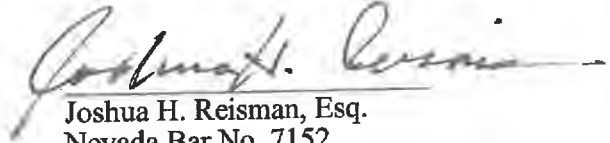
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III. CONCLUSION

The Petitions violate the single-subject requirement under NRS § 295.009(1)(a) by covering the separate and unrelated subjects of lending, loans, and consumer litigation funding. Defendants' improper attempt to recast the Petitions' purposes in overly generalized terms fails to cure the violation. Further, by concealing the Petitions' effect on consumer litigation funding, the descriptions of effect will cause voter confusion. As such, the Petitions violate NRS §§ 295.009(1)(a) and (1)(b); and Plaintiffs request that the Court enter an order invalidating the Petitions and granting the relief as requested by the Plaintiffs in their Complaint.

DATED this 8th day of March, 2024.

REISMAN·SOROKAC



Joshua H. Reisman, Esq.

Nevada Bar No. 7152

Elizabeth M. Sorokac, Esq.

Nevada Bar No. 8270

Michael R. Kalish, Esq.

Nevada Bar No. 12793

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Attorneys for *Plaintiffs Preferred and ARC*

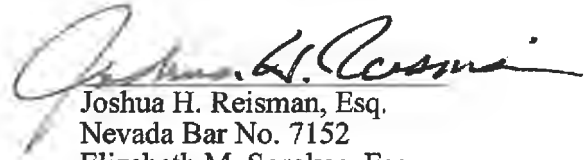
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AFFIRMATION

The undersigned hereby affirms that the foregoing document does not contain any personal information or the social security number of any person.

DATED this 8th day of March, 2024.

REISMAN·SOROKAC



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9 Attorneys for *Plaintiffs*

10
11 **IN THE FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

12 **PREFERRED CAPITAL FUNDING -**
13 **NEVADA, LLC, a Nevada limited liability**
14 **company, and ALLIANCE FOR**
15 **RESPONSIBLE CONSUMER LEGAL**
16 **FUNDING, an Illinois nonprofit corporation,**

17 **Plaintiffs,**

18 **vs.**

19 **FRANCISCO V. AGUILAR, in his official**
20 **capacity as NEVADA SECRETARY OF**
21 **STATE, and KATE FELDMAN, an individual,**

22 **Defendants,**

23 **and**

24 **STOP PREDATORY LENDING NV, a Nevada**
25 **nonprofit corporation,**

26 **Intervenor-Defendant.**

27 **AND ALL RELATED ACTIONS.**

28
Plaintiffs Preferred Capital Funding - Nevada, LLC, a Nevada limited liability company,
and Alliance For Responsible Consumer Legal Funding, an Illinois nonprofit corporation, by and

REC'D FIL

2024 MAR 21 AM 9:00

WILLIAM C. FRANZ

C. FRANZ

BY _____

ORIGINAL CASE NO. 24 OC 00023 1B

CONSOLIDATED WITH

LEAD CASE NO. 24 OC 00018 1B
DEPT. NO. II

**NOTICE OF FILING OF AFFIDAVITS OF
SERVICE**


1 through their attorneys, Joshua H. Reisman, Esq., Elizabeth M. Sorokac, Esq., and Michael R.
2 Kalish, Esq., of the law firm Reisman Sorokac, hereby submit the following Affidavits of Service:

3 (1) Affidavit of Service of the Summons and Complaint for Declaratory and Injunctive
4 Relief Challenging Initiative Petitions S-01-2024 and S-03-2024, filed January 29,
5 2024, as Case No. 24 OC 00023 1B, served upon Defendant Francisco V. Aguilar
6 through the Nevada Attorney General. An executed copy of the Affidavit of Service is
7 attached hereto as Exhibit 1.

8 (2) Affidavit of Service of the Summons and Complaint for Declaratory and Injunctive
9 Relief Challenging Initiative Petitions S-01-2024 and S-03-2024, filed January 29,
10 2024, as Case No. 24 OC 00023 1B, served upon Defendant Francisco V. Aguilar. An
11 executed copy of the Affidavit of Service is attached hereto as Exhibit 2.

12
13
14
15
16 DATED this 11th day of March, 2024.

17 REISMAN·SOROKAC

18 

19 Joshua H. Reisman, Esq.
20 Nevada Bar No. 7152
21 Elizabeth M. Sorokac, Esq.
22 Nevada Bar No. 8270
23 Michael R. Kalish, Esq.
24 Nevada Bar No. 12793
25 8965 South Eastern Avenue, Suite 382
26 Las Vegas, Nevada 89123

27 *Attorneys for Plaintiffs*
28

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of March, 2024, I served the foregoing **NOTICE OF FILING OF AFFIDAVITS OF SERVICE** via electronic mail, per the February 22, 2024 Stipulation and Scheduling Order of the Court, as follows:

Bradley S. Schrager, Esq.
Daniel Bravo, Esq.
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bradley@bravoschrager.com
daniel@bravoschrager.com

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Billie Shadron
Judicial Assistant
**FIRST JUDICIAL DISTRICT COURT
DEPT. II**
Bshadron@carson.org

By: Rachel Lord
Rachel Lord, an employee of REISMAN
SOROKAC

EXHIBIT 1

1 **AFFT**
2 Reisman Sorokac
3 Elizabeth M. Sorokac Esq.
4 8965 S. Eastern Ave., Ste 382
5 Las Vegas, NV 89123
6 State Bar No.: 8270
7 Attorney(s) for: Plaintiff(s)

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FIRST JUDICIAL DISTRICT COURT
CARSON CITY, NEVADA

Preferred Capital Funding-Nevada, LLC, a Nevada Limited Liability
Company; et al. *Plaintiff(s)*
vs
Francisco V. Aguilar in His Official Capacity as Nevada Secretary of
State; et al. *Defendant(s)*

Case No.: 24OC00023-1B
Dept. No.: I
Date:
Time:

AFFIDAVIT OF SERVICE

I, Peter Harrison Aylworth, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604, and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies) of the: Summons: Complaint for Declaration and Injunctive Relier Challenging Initiative Petitions S-01-2024 and S-03-2024 on the 9th day of February, 2024 and served the same on the 9th day of February, 2024 at 2:09 PM by serving the Defendant, Francisco V. Aguilar in His Official Capacity as Nevada Secretary of State by personally delivering and leaving a copy at Nevada Attorney General, 100 N. Carson St., Carson City, NV 89701 with Sandie Geyer as Legal Office Manager an agent lawfully designated by statute to accept service of process. Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.
Executed on this 12th day of February, 2024.


Peter Harrison Aylworth # R-2023-18846
Legal Process Service License # 604

WorkOrderNo 2400929

A00602



EXHIBIT 2

1 **AFFT**

2 Reisman Sorokac

3 Elizabeth M. Sorokac Esq.

4 8965 S. Eastern Ave., Ste 382

5 Las Vegas, NV 89123

6 State Bar No.: 8270

7 Attorney(s) for: Plaintiff(s)

8
9
10 **FIRST JUDICIAL DISTRICT COURT**
11 **CARSON CITY, NEVADA**12 **Preferred Capital Funding-Nevada, LLC, a Nevada Limited Liability**
13 **Company; et al.**14 **vs**15 **Plaintiff(s)**16 **Francisco V. Aguilar in His Official Capacity as Nevada Secretary of**
17 **State; et al.**18 **Defendant(s)**

19 Case No.: 24OC00023-1B

20 Dept. No.: I


21 Date:

22 Time:

23 **AFFIDAVIT OF SERVICE**

24 I, Clinton Terry Turney, being duly sworn deposes and says: That at all times herein affiant was and is a citizen of
25 the United States, over 18 years of age, licensed to serve civil process in the State of Nevada under license #604,
26 and not a party to or interested in the proceeding in which this affidavit is made. The affiant received 1 copy(ies)
27 of the: Summons; Complaint for Declaration and Injunctive Relier Challenging Initiative Petitions S-01-2024
28 and S-03-2024 on the 14th day of February, 2024 and served the same on the 14th day of February, 2024 at
29 9:16 AM by serving the Defendant, Francisco V. Aguilar in His Official Capacity as Nevada Secretary of
30 State by personally delivering and leaving a copy at 401 N. Carson St., Carson City, NV 89701 with Nora Nunez
31 as Administrative Assistant an agent lawfully designated by statute to accept service of process.
32 Pursuant to NRS 239B.030 this document does not contain the social security number of any person.
33
34
35
36

I declare under penalty of perjury under the law
of the state of Nevada that the foregoing is true and
correct. Executed this 15th day of February 2024


Affiant – Clinton Terry Turney #: R-2022-04093
Legal Process Service - License # 604

WorkOrderNo 2400904



A00604

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8 Attorneys for *Plaintiffs*

10 **IN THE FIRST JUDICIAL DISTRICT COURT**
11 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

12 **PREFERRED CAPITAL FUNDING -**
13 **NEVADA, LLC, a Nevada limited liability**
14 **company, and ALLIANCE FOR**
15 **RESPONSIBLE CONSUMER LEGAL**
16 **FUNDING, an Illinois nonprofit corporation,**

17 **Plaintiffs,**

18 **vs.**

19 **FRANCISCO V. AGUILAR, in his official**
20 **capacity as NEVADA SECRETARY OF**
21 **STATE, and KATE FELDMAN, an individual,**

22 **Defendants,**

23 **and**

24 **STOP PREDATORY LENDING NV, a Nevada**
25 **nonprofit corporation,**

26 **Intervenor-Defendant.**

27 **AND ALL RELATED ACTIONS.**

28 Pursuant to NRCP 4.2(a)(3), I acknowledge that I am duly authorized to, and have
accepted service of the following documents on behalf of Defendant Kate Feldman in Case No. 24
OC 00023 1B, which has been consolidated in the lead case—Case No. 24 OC 00018 1B:

REC'D & FILED

2024 MAR 21 AM 9:00

WILLIAMSON COUNTY
C. FRANZ CLERK

BY _____

ORIGINAL CASE NO. 24 OC 00023 1B

CONSOLIDATED WITH

LEAD CASE NO. 24 OC 00018 1B
DEPT. NO. II

ACCEPTANCE OF SERVICE

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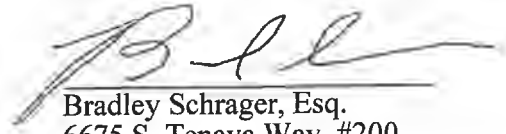
(1) Summons, issued January 29, 2024; and

(2) Complaint For Declaratory and Injunctive Relief Challenging Initiative Petitions S-01-2024 and S-03-2024, filed January 29, 2024.

Nothing in this Acceptance of Service shall be deemed a waiver or forfeiture of any defenses or arguments Defendant Kate Feldman may have, which are expressly preserved.

DATED this 11th day of March, 2024.

BRAVO SCHRAGER LLP



Bradley Schrager, Esq.
6675 S. Tenaya Way, #200
Las Vegas, Nevada 89113

Attorney for Defendant Kate Feldman

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of March, 2024, I served the foregoing

ACCEPTANCE OF SERVICE via electronic mail, per the February 22, 2024 Stipulation and Scheduling Order of the Court, as follows:

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Rachel Lord, an employee of REISMAN
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