In the
Supreme Court of the State of Nevada

DAILYPAY, INC., et al.,

Appellants,

vs.

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

Respondents.

Case No.: 88557

District Court Case No.:
Lead Case No.: 24 OC 00018 1B

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

RESPONDENTS' OMNIBUS ANSWERING BRIEF

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DISCLOSURE STATEMENT PURSUANT TO N.R.A.P. 26.1

The undersigned counsel of record certifies that there are no persons or entities as described in N.R.A.P. 26.1(a) that must be disclosed.

The following law firms have appeared in district court and/or are expected to appear in this Court on behalf of Respondents.

> Bradley S. Schrager, Esq., and Daniel Bravo, Esq., of Bravo Schrager, LLP.

DATED this 17th day of September, 2024.

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JURISDICTIONAL STATEMENT

This Court has jurisdiction over this appeal pursuant to N.R.A.P. 3A(b)(1) because it is an appeal from a final order resolving all claims presented to the district court. The final order was entered on April 16, 2024. The notice of appeal was filed on April 26, 2024. This appeal is timely because it was filed within thirty (30) days after the entry of the final judgment as N.R.A.P. 4(a)(1) requires.

ROUTING STATEMENT

This case is presumptively retained by this Court pursuant to N.R.A.P. 17(a)(2) because it is a case involving a ballot or election question.

I. INTRODUCTION

It is well-known that most loans to consumers in Nevada lack limits on their interest rates. The initiative petition at issue here, S-03-2024 (the "Petition"), defines as "loans" the transactions it seeks to regulate, sets an upper limit of 36 percent on interest annually for them, includes mechanisms to avoid evasion of that interest rate limit, and provides for penalties for violation of the Petition's terms. The district court found that the Petition's primary purpose (and single subject) "is to limit interest rates on consumer loan transactions," which is exactly what Feldman argued below.[1] The district court further found that "all components of the Petition are functionally related and germane to that purpose." *See* Vol. IV of Appellants' Appendix ("AA") at 754.[2] The

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[1] That any appellant claims the district court invented the primary purpose of the Petition out of whole cloth is demonstrably untrue and disingenuous. Precisely the same primary purpose that is plain from the Petition's text and description was argued before the court:

Mr. Schrager: "That's its purpose, *limiting interest rates on consumer loans …*" *See* IV AA 673:12–13.

and

Mr. Schrager: "[T]he primary subject of [S-03-2024] is *limiting interest rates on consumer loans …*" *See* IV AA 675:12–13.

[2] For the Court's convenience, citations to the Appellants' Appendix shall be cited as "[Vol. No.] AA [Page No.]".

required description of effect was approved as not only legally valid, but "as good a one as you can give" for the subject matter therein. *See* IV AA 721:17. Appellants' ancillary arguments regarding whether Respondents had complied with Article 19, Section 3's "full-text" requirements were also rejected.

In other words, the district court approved a fairly straightforward initiative measure that seeks to enact interest rate caps upon defined loan transactions in Nevada; that protects its effects by prohibiting the structuring of transactions to avoid its interest rate limits; that voids and penalizes loan transactions that violate its terms; and that features a clearly-written description of effect that, as the district court found, "proceeds, succinctly and directly, through (1) a general statement of the Petition's purpose, (2) a neutral and accurate statement of current law regarding interest rate limitations, (3) a description of the transactions to which the proposed cap would apply, and (4) a statement of enforcement aspects of the proposal." IV AA 756.

The gyrations through which the multiple Appellants put themselves to manufacture counter-arguments do them little credit. It is one thing to argue, as these Appellants did in the first appeal, that

coupling interest rate limitations with asset protection provisions pressed the boundaries of Nevada's single-subject rule; it is quite another to assert, as Preferred Capital Funding-Nevada, LLC did below, that the 36 percent limitation on interest rates, by itself, contained nearly a **dozen separate subjects** (a view it has since modulated, if not abandoned, due to its incredibility). *See* I AA 152. In any event, the fact that the proposed interest rate limitation will apply to a number of different types of loan transactions does nothing to create impermissible, multiple "subjects" under this Court's Article 19 or NRS Chapter 295 jurisprudence.[3] Neither does the application of the cap to multiple loans and lenders make the Petition overbroad, in any reading of this Court's previous treatments of the concept. Additionally, every Appellant complains that their own specific concerns are not expressly discussed in the 200-word description of effect, as if such were possible, and that they would have written in differently. They are all free, together or in

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[3] Appellants consistently misconstrue this Court's distinction between a "subject" and a "change" in law or a mere portion of a proposal. *See Helton v. Nevada Voters First PAC*, 138 Nev. 483, 488 n.5, 512 P.3d 309, 315 n.5 (2022): "A *subject* is the overall thing being discussed, whereas a change is the alteration or modification of existing law. *See* 'Subject,' *Black's Law Dictionary* (11th ed. 2019) (defining "subject" as "[t]he matter of concern over which something is created")."

tandem, to mount as aggressive a political campaign as they can, in order to bring all their concerns to the voters of Nevada; they are not free to demand that a clearly-written description be overhauled to fit their personal prescriptions. Finally, most Appellants take another shot at the "full-text" argument, but this Court has never required any initiative proponent to include every statute that could possibly be affected by a proposal to be included in a petition. Such would be enormously burdensome to the exercise of the initiative power, and would undoubtedly lead to follow-on litigation regarding whether a proponent had left out some tangential provision of law that some opponent considered important. None of these arguments amount to what would be necessary to invalidate the Petition.

Appellants cannot meet their heavy burden to establish that the Petition is clearly invalid. Petition S-03-2024 comprises a single-subject under NRS 295.009(1)(a), contains a perfectly accurate and non-misleading description of effect pursuant to NRS 295.009(1)(b), and does not run afoul either of Article 19, Section 3's "full text" requirement. *See* Nev. Const. art. 19, § 3. All the components of the Petition complement one another to achieve a single goal. Everything about the Petition is

straightforward, succinct, and clearly described within the statutory parameters of a 200-word description, so that Nevadans can make informed decisions about whether to affix their signatures and place them on a general election ballot. There are no grounds for this Court to invalidate the Petition.

With this ballot measure, Nevadans will have the opportunity to decide for themselves if a 36 percent rate cap on amounts financed is sound policy. Appellants will have the opportunity to convince them otherwise. This is the nature of direct democracy in Nevada.

II. STATEMENT OF THE ISSUES ON APPEAL

1. Whether the Petition complied with NRS 295.009(1)(a) and NRS 295.009(2), Nevada's single-subject rule for initiative petitions;
2. Whether the Petition's description of effect is legally adequate, pursuant to NRS 295.009(1)(b); and
3. Whether the Petition satisfies Article 19, Section 3's "full-text" requirement.

III. STANDARD OF REVIEW

This case turns on the proper interpretation of NRS 295.009, the Nevada Constitution, and the Petition. "Questions of law, including questions of constitutional interpretation and statutory construction, are reviewed de novo." *Peck v. Zipf*, 133 Nev. 890, 892, 407 P.3d 775, 778 (2017) (cleaned up); *see also Helton*, 512 P.3d at 313 (applying de novo review to petition challenge).

IV. STATEMENT OF THE CASE AND FACTS

On January 5, 2024, Kate Feldman filed Initiative Petition S-01-2024 with the Nevada Secretary of State. I AA 8–32. Initiative Petition S-01-2024 proposes to amend the Nevada Revised Statutes to include a new chapter 604D entitled the "Preventing Predatory Payday and Other Loans Act." I AA 9. On January 24, 2024, Ms. Feldman later filed a second Petition, S-03-2024, that is the subject of this appeal and which proposes to enact the same "Preventing Predatory Payday and Other Loans Act," but omits provisions regarding collections exemptions included in Initiative Petition S-01-2024. I AA 120–136. This present appeal only concerns Initiative Petition S-03-2024, which the district

court held as valid and could proceed with signature gathering. IV AA 750–759.

On January 26, 2024, Appellants Nevadans for Financial Choice and Christina Bauer (collectively, "Nevadans for Financial Choice") filed a Complaint for Declaratory and Injunctive Relief challenging the legal sufficiency of Initiative Petition S-01-2024, pursuant to NRS 295.061, and submitted a Brief in Support of the Complaint. I AA 1–32; I AA 33–67. Subsequently, on February 14, Appellants Nevadans for Financial Choice filed a First Amended Complaint timely adding Initiative Petition S-03-2024 to their challenge, and submitted a Brief in Support of the Amended Complaint. III AA 413–465; III AA 466–469.

On January 29, 2024, Appellant DailyPay, Inc. ("DailyPay") filed a Complaint for Declaratory and Injunctive Relief challenging the legal sufficiency of both Initiative Petition S-01-2024 and Initiative Petition S-03-2024, pursuant to NRS 295.061. I AA 68–144.

On January 29, 2024, Appellants Preferred Capital Funding-Nevada, LLC and Alliance for Responsible Consumer Legal Funding (collectively, "Preferred Capital") filed a Complaint for Declaratory and Injunctive Relief challenging the legal sufficiency of both Initiative

Petition S-01-2024 and Initiative Petition S-03-2024, pursuant to NRS 295.061. I AA 145–204.

On February 13, 2024, Appellants ActiveHours, Inc. and Stacy Press (collectively, "ActiveHours") filed a Complaint for Declaratory and Injunctive Relief challenging the legal sufficiency of Initiative Petition S-03-2024, pursuant to NRS 295.061. I AA 205–261.

On or about February 22, 2024, the parties stipulated to, and the district court ordered, that the filed suits be consolidated into one action challenging the two petitions, to make the matter more efficient in terms of judicial economy and to process the matters expeditiously. III AA 470–479. The parties also stipulated to the intervention of Ms. Feldman and Stop Predatory Lending NV, a Nevada nonprofit corporation, as appropriate and so that each case featured the same initiative proponents. *Id*. A briefing schedule was also agreed to. *Id*. After briefing, the district court held a hearing on the consolidated matters on March 22, 2024. IV AA 608–749. The district court made oral pronouncement of its rulings from the bench, and tasked each side with preparing orders reflecting same, declaring S-01-2004 to be invalid due to single-subject

concerns, but that S-03-2004 was legally sufficient and could move forward to gather signatures. IV AA 718–723.

On April 15, 2024, the district court issued its order declaring that Petition S-03-2024 was valid under Nevada law and could proceed signature gathering, and the order was promptly entered on April 16, 2024. IV AA 750–759; IV AA 760–774.

On April 26, 2024, Appellant DailyPay filed its appeal concerning Initiative Petition S-03-2024. IV AA 775–826. Later, the other Appellants timely filed their respective appeals concerning Initiative Petition S-03-2024. V AA 827–880; V AA 881–927; V AA 928–982.

V. ARGUMENT

A. The Initiative Power

Initiative is the power of the people to propose bills and laws and to enact or reject them at the polls, independent of the legislative assembly. *See Rea v. City of Reno*, 76 Nev. 483, 486, 357 P.2d 585, 586 (1960). The constitutional rights of Nevada to propose initiatives and referenda are sacrosanct, and courts are charged with preserving those rights in every way it can. *See*, *generally,* Nev. Const. art. 19. And, just as in the case of regular legislation, "[i]n determining whether a ballot initiative

proponent has complied with NRS 295.009, it is not the function of this court to judge the wisdom of the proposed initiative." *Helton*, 512 P.3d at 316 (quoting *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 41, 293 P.3d 874, 878 (2013))). The function of the judiciary at the pre-election stage, rather, is to ensure the access of Nevadans to the processes of direct democracy for validly-proposed measures, such as the Petition.

The Nevada Supreme Court "has consistently held that the initiative powers granted to Nevada's electorate are broad." *We People Nevada ex rel. Angle v. Miller*, 124 Nev. 874, 886, 192 P.3d 1166, 1174 (2008). This Court will exercise "every effort to sustain and preserve the people's constitutional right" under Article 19. *Id.*

The people's initiative power "is legislative in nature." *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 914, 141 P.3d 1235, 1248 (2006). It is "'coequal, coextensive, and concurrent' with that of the Legislature; thus, the people have power that is legislative in nature." *Id.*, 122 Nev. at 914 (quoting *Gallivan v. Walker*, 54 P.3d 1069, 1080 (Utah 2002)); *see also Educ. Freedom PAC v. Reid*, 138 Nev. Adv. Op. 47, 512 P.3d 296, 302 (2022). Because the people's initiative power is

legislative in nature, that power is subject to the same prerogatives and limitations placed upon a Legislature. *Educ. Freedom PAC v. Reid*, 512 P.3d at 305; *see also State ex rel. Stenberg v. Moore*, 602 N.W.2d 465, 474, 258 Neb. 199, 210 (1999) ("the Legislature and the electorate are concurrently equal in rank as sources of legislation").

It is important, therefore, to contextualize and reject, at the very outset, one of the major lines of argument presented by multiple Appellants—regarding whether their particular financial product or business model (all of which, indisputably, involve the giving out of money to those in need of it, with the expectation of profit in return) has, at some earlier point in time, been defined or not defined as a "loan" or as "lending" by the Nevada Legislature. But, again indisputably, the Nevada Legislature could choose to define certain transactions as "loans," and could limit interest rates on those transactions, and could, if it desired, define transactions as "loans" for the purpose of limiting rates of interest. Appellants do not seem to understand that the People, acting in their legislative capacity through the initiative process, have full freedom to define the transactions identified in the Petition as "loans" for the purposes outlined in the proposal. In fact, this is the very point of the

popular initiative process, to permit citizens to propose and enact legislation "independent of the legislative assembly." *Rea*, 76 Nev. at 486.

It is entirely understandable that Appellants like DailyPay or Preferred Capital would here seek to defend what lobbyists have won them in past years—an advantageous definition of their financial product in *state law*. At the very least, it is clear from recent actions by the federal government that the nature of these financial products is contestable and in flux. In July of this year, the United States Consumer Financial Protection Bureau issued an interpretive rule stating that "**earned wage products, are consumer loans subject to the Truth in Lending Act**," and finding "that workers using these employer-sponsored products take out an average of 27 such **loans** per year," and that **"the APR for a typical employer-partnered earned wage cash advance is 109.5%.**"[4]

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[4] *See "*CFPB Proposes Interpretive Rule to Ensure Workers Know the Costs and Fees of Paycheck Advance Products: Proposed rule also addresses unusual practice of workers "tipping" their lender or employer," https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-interpretive-rule-to-ensure-workers-know-the-costs-and-fees-of-paycheck-advance-products/ (last accessed on Sept. 3, 2024).

Preferred Capital, for its part, relies on the supposed non-recourse nature of its profitability model to claim its product is not and (one supposes it would insist) cannot be a "loan." But Preferred Capital is not tossing money around haphazardly, it is doing diligent research on civil cases and then placing a bet on its outcome, and if the recipient of its wagering largesse win—as Preferred Capital presumes it will—the stake is returned, plus a handsome premium on top. This is not much different than a lender who provides hard cash: lenders seek loan recipients who can pay the money back, but if the recipient goes bankrupt and the amount is discharged, the bet does not pay off. Recourse is never guaranteed, in other words. NFFC, DailyPay, ActiveHours, and Preferred Capital—all of them provide money to people in need, and they expect a profitable return on their transaction from the people who take their money. The specific ways in which all of these Appellants lay their bets on consumers is not relevant. The Petition seeks to ensure that the interest on those transactions will not exceed 36 percent annually, it is as simple as that.

But all this is immaterial anyway to whether Nevada statutory legislation proposed by initiative may defined those products and

transactions as loans for purposes of limiting the interest rates Appellants may be permitted to charge consumers. Appellants place an awful lot of weight upon an argument that simply does not pertain to this Court's consideration.[5]

B. The Petition Complies With Nevada's Single Subject Rule

1. Legal Standard Under NRS 295.009(1)

Nevada law requires that any initiative petition "[e]mbrace but one subject and matters necessarily connected therewith and pertaining thereto." NRS 295.009(1)(a). "The single-subject requirement 'facilitates the initiative process by preventing petition drafters from circulating confusing petitions that address multiple subjects.'" *Helton*, 512 P.3d at 314 (quoting *Nevadans for the Prot. of Prop. Rights, Inc.*, 122 Nev. at 902).

There is a very specific single-subject analysis under this Court's jurisprudence. "In considering single-subject challenges, the court must

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[5] Appellant ActiveHours, Inc. concedes much when it admits that "the Initiative's proponents are fee to create new categories of loans, [but] that separate subject must be tackled through a separate initiative." ActiveHours' Op. Br., at 9. ActiveHours is only half right; Respondents are free to define transactions as loans for the purposes of an interest rate cap, and are also free to do so in this single initiative, as long as the components of the Petition are germane to the primary subject and to one another. Here, defining earned-wage transactions as loans does both.

first determine the initiative's purpose or subject[.]" *Helton*, 512 P.3d at 314. "To determine the initiative's purpose or subject," courts "look[] to its textual language and the proponents' arguments," as well as "whether the description of effect articulates an overarching purpose and explains how provisions relate to a single subject." *Id.* (quoting *Las Vegas Taxpayer Accountability Comm. v. City Council*, 125 Nev. 165, 180, 208 P.3d 429, 439 (2009)).

Once an initiative's single-subject has been identified, courts must "then determine if each provision is functionally related and germane to each other and the initiative's purpose or subject." *Helton*, 512 P.3d at 314. Significantly, "even if an initiative petition proposes more than one change to Nevada law, it may still meet the single-subject requirement, provided that the proposed changes are functionally related and germane to each other and a single subject." *Id.*, 512 P.3d at 312.

2. The District Court's Order

Here, the district court determined that the Petition's purpose is to "limit interest rates on consumer loan transactions." IV AA 754. This purpose is apparent from the text of the Petition itself; is clearly stated in the Petition's description of effect; and, as noted above, was argued to

the court below in exactly those words. There is no other purpose to be gleaned from any of those sources, certainly no alternative purpose that can be described as "primary," and none of the Appellants ventures to identify any other possible purposes. The district court, therefore, had it precisely correct.

The court went on to determine, again with little difficulty, that each provision of the Petition is functionally related and germane to each other and the primary purpose of limiting interest rates on consumer loan transactions. Every provision of the Petition either "establish[es] that limit, make[s] conforming or ancillary changes to other statutes, or—in the case of Sections 10 through 14, provide[s] enforcement mechanisms necessary and germane to the operation of the Petition's purpose." IV AA 754–755.

Unavailing before the district court, for example, was Nevadans for Financial Choice's breathless insistence that the provisions concerning the Depository Institutions Deregulation and Monetary Control Act of 1980 ("DIDMCA") create either single-subject or description of effect issues for the Petition. The court below understood—as should this Court—that it would be foolish to propose an interest rate cap on

consumer loans in Nevada **without** a provision opting out of DIDMCA, under which any Nevada bank could simply borrow the interest rates of other states with higher rates—or with no usury provisions at all—and evade the rate cap entirely and effortlessly. The NFFC's resort to casting DIDMCA as venerable and ancient law is, itself, a bit silly, as states have opted out of its interest-rate-exportation provisions, and continue to do so even at this very moment.[6] Colorado, for example, opted out of DIDMCA on July 1, 2024, and did so without any apparent calamity.[7]

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[6] "Rhode Island and Minnesota Latest States with Bills Opting Out of Federal Banking Law Allowing Interest Rate Exportation," *Consumer Financial Services Monitor*, February 14, 2024, *https://www.consumerfinancialserviceslawmonitor.com/2024/02/rhode-island-and-minnesota-latest-states-with-bills-opting-out-of-federal-banking-law-allowing-interest-rate-exportation/* (last accessed Sept. 3, 2024). Also, it bears noting that 150 years' worth of political party nominations and plurality-voting elections was apparently much less worthy of veneration by recent ballot measure proponents.

[7] *See https://www.consumerfinancialserviceslawmonitor.com/2023/06/colorado-passes-legislation-seeking-to-stop-state-chartered-banks-from-preempting-colorados-usury-limit/* (last accessed Sept. 3, 2024).

Beginning in the 1990s, certain unscrupulous lenders started to partner with state-chartered banks, in a practice known as "rent-a-bank," to evade interest rate 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 Petition ensures that these lenders will not be able to use rent-a-bank schemes to evade the proposed rate cap by opting Nevada out of the federal statute that allows out-of-state banks to "export" their interest rate to Nevada consumers. I

That NFFC can claim that the opportunity to evade state-law interest rate limitations somehow "benefits consumers" is an example of the liberties Appellants take in order to justify their opposition to the Petition but, again, provides no grounds for its invalidation.

The district court was careful and exact, and conducted the same analysis this Court will undertake, most likely with the same conclusion: the Petition is a valid exercise of the initiative power.

3. The Petition Satisfies The Single-Subject Rule

a. The provisions of the Petition are all functionally related and germane to one another

The Petition's primary purpose is to limit interest rates on consumer loan transactions, and all components of the measure are functionally related and germane to that purpose. In fact, all components

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AA 126. Similarly, Section 11 of the Petitions also combats rent-a-bank by making any lender whose business model is routing loans through an out-of-state bank subject to the initiative's rate cap. I AA 124–125. Both provisions are closely tied to the purposes of the rate cap 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-bank-schemes-have-no (last accessed September 3, 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 interest rate caps.

of the measure are *necessary* to the appropriate functioning of the Petition's project.

The Petition's text and description of effect both confirm its primary purpose. As the description of effect explains, the Petition "addresses high-interest lending practices by establishing maximum interest rates charged to consumers." I AA 131. The description of effect therefore "articulates an overarching purpose" that is neither undermined nor contradicted by any of the Petition's other provisions. *Helton*, 512 P.3d at 314.

This Court's decision in *Helton* underscores the correctness of the district court's decision. In *Helton*, the initiative's "single subject" was "the *framework* by which specified officeholders are presented to voters and elected." *Helton*, 512 P.3d at 314. That the provisions were separate (and even arguably independent, as the Court noted in its opinion) was not material to a single-subject analysis because the provisions had a functional relationship to one another in achieving the purpose of the initiative generally. Obviously, in *Helton*, each aspect of the new rules governing primary elections did not relate directly to each aspect of the separate rules governing general elections; the specific ranked-choice

rules that would govern general elections, for example, bore no direct relationship to the rules governing which party name would be listed on a primary ballot next to a given candidate. *See id.* at 313. But that was not how the Court approached the single-subject question; instead, it focused on the overall "policy changes" that the petition would have adopted, not the specific implementation details, and it assessed whether the two policy changes involved unrelated matters or a single framework. *Id.* at 314–15. Here, in fact, and in contrast to *Helton,* the overarching change proposed in the Petition is singular—limiting interest rates on consumer loans, and all other provisions support that central goal. This Court need not even contemplate any potential nexus, as it had to in *Helton.*

The Court's recent decision in *Nevadans for Reprod. Freedom v. Washington*, 40 Nev. Adv. Op. 28, 546 P.3d 801 (2024), also emphasizes this conclusion from *Helton*. There, the Court again stated that "an initiative petition can propose more than one change and still comply with the single-subject requirement as long as the changes are functionally related and germane to each other and the overall subject of the initiative." *Id.,* 546 P.3d at 807 (citing *Helton*, 512 P.3d at 315). That

the provisions at issue in *Nevadans for Reprod. Freedom* "may be addressed by various NRS chapters, they each concern the subject of reproduction and can be addressed together in a petition addressing that subject." *Id*. Similarly, here, although the Petition may touch upon issues or matters that cut across multiple existing statutes or even chapters, the only pertinent determination is whether those proposed changes are functionally related and germane to each other and the overall subject of the measure.

But Appellants here work very hard to fabricate multiple subjects in the Petition's terms. NFFC attempts to distinguish *Helton* in that the dual aspects of the measure there (which the Court recognized could surely have been brought as separate initiatives) were described as having some synergy: the "effectiveness of one change would be limited without the other." *Helton*, 512 P.3d at 315. It is certainly not true that an open primary system would be functionally meaningless without ranked choice general elections; plenty of states have open primaries only and no ranked voting. Here, in contrast, the Petition simply would not function without all its provisions, all of which actively further the goals the measure purports to achieve.

It is also irrelevant to complain, as do almost all the Appellants, that there are multiple kinds of transactions that fall under the Petition's proposed 36 percent interest rate limit. That does not, itself, create a single-subject problem under this Court's previous decisions. Instead, from a consumer's point of view, regardless of which of the types of transactions listed he or she enters into, the annual interest rate will not lawfully exceed 36 percent annually. The distinctions Appellants draw between an "earned-wage access provider" and a "payday loan" do not create single-subject concerns. It would be absurd to suggest that to cap interest rates on multiple kinds of consumer loans, a proponent would have to draft and run discrete ballot measures on all conceivable types.

b. The Petition's subject is not excessively general

In *Helton* (and also in *Nevadans for Reprod. Freedom*, in its discussion of "framework" and "mechanics" (*see* 546 P.3d at 807 n.3)), the measure in question was found not to be overbroad, despite the broadly-stated purpose of how "specified officeholders are presented to voters and elected." *Helton*, 512 P.3d at 314. This "framework" took in changes to the historic structure of primary elections that would, essentially do away with party nominations entirely, and a new method of general

election voting involving the ranking of up to five candidates, any of whom may wind up gaining the elector's vote. Clearly, the two changes in law could have been proposed in separate ballot measures without issue, and these were very big and sweeping proposed changes to the Nevada Constitution. But the Court there said that not only did they not need to be brought separately and that these disparate changes were not excessively broad, but that "the effectiveness of one change would be limited without the other." *Helton*, 512 P.3d at 315. Here, the effectiveness of the Petition would not only be *limited* without all its parts, it would be almost entirely destroyed.

The Petition specifically targets interest rates on consumer loans. It does not regulate the loan industry as a whole. It does not regulate how lenders select their borrowers. It does not regulate the length of a loan's repayment, or the collateral a lender might require of a borrower, or the ways in which a lender may collect on a loan, or the assets which are available for attachment by a lender who is owed money by a borrower in default. It cannot be said, therefore, that the subject of the Petition is "finance," or "lending," or any such generality even if, arguably, those sorts of categories might appear too broad to this Court if presented by a

ballot measure proponent. The subject here, stated once again, is specifically the limiting of interest rates on consumer loans.

Compared to over-general subjects that this Court has previously found too broad in the past—"public welfare," "fiscal affairs," "statutory adjustments," or "voter approval"—this Petition's subject is not even in the same universe of overbreadth. Furthermore, looking for guidance elsewhere, this Court in *Las Vegas Taxpayer Accountability Comm.*, identified sister courts' invalidation of measures whose primary subjects were "government," "public welfare," "fiscal affairs," or "public disclosure." *Id.*, 125 Nev. at 181. The Petition's primary subject is discrete and clear, in direct contrast to any of these other examples. Go say otherwise would be, essentially, to call into question whether any legislature could cap interest rates on loans at all, which is not a very plausible concept.

The single-subject rule "forbids joining disparate provisions which appear germane only to topics of excessive generality…" *Harbor v. Deukmejian*, 43 Cal.3d 1078, 742 P.2d 1290, 1303 (1987) (quoting *Brosnahan v. Brown*, 32 Cal.3d 236, 651 P.2d 274, 284 (1982)). To be found excessively general, therefore, an initiative's provisions must

initially be considered disparate, and their connection must be the product of an artificial joinder by proponents simply shooting too high and wide in their ambitions. In no legitimate reading does that describe this case.

c. The Petition does not engage in logrolling

Several Appellants make "logrolling" arguments, but this Court has been clear on the meaning of that concept, and logrolling is in no way a concern here. Let us first say, as an initial point, that in contrast to what NFFC claims, payday loans and lenders are not necessarily unpopular, or at least we have no evidence from NFFC that their mere presence in an initiative somehow assures passage of the measure. What probably is unpopular is *predation*, charging high or unlimited interest rates to people in emergency circumstances, no matter who engages in it. It is that practice that the Petition targets, not any particular manner of lending money to people in need.

The single-subject requirement "prevent[s] the enactment of unpopular provisions by attaching them to more attractive proposals or concealing them in lengthy, complex initiatives (*i.e.*, logrolling)." *Helton*, 512 P.3d at 314 (quoting *Las Vegas Taxpayer Accountability Comm.*, 125

Nev. at 176–77). "Logrolling" does not refer merely to the inclusion of multiple provisions in a single petition. Instead, it concerns "the inclusion of *two distinct changes* in a single initiative petition," which in turn "forces the electorate to choose between two potentially competing policy goals." *Helton*, 512 P.3d at 320 (Cadish, J., dissenting) (emphasis added); *see also Nevadans for the Prot. of Prop. Rights, Inc.*, 122 Nev. at 906 (single-subject requirement "prevent[s] proposals that would not otherwise become law from being passed solely because they are attached to more popular measures"); *Id.* at 922 (Hardesty, J., concurring in part and dissenting in part) (logrolling "occurs when two or more *completely separate provisions* are combined in a petition, one or both of which would not obtain enough votes to pass without the other" (emphasis added)).

Here, the interest rate limitation applies to all of the defined transactions. The Petition is not sneaking in a controversial proposal by pairing it with more popular components. *See Nevadans for the Prot. of Prop. Rights, Inc.*, 122 Nev. at 922 (Hardesty, J., concurring in part and dissenting in part) ("Generally, to 'log-roll' a provision into enactment, the proponent advances a proposition that the proponent expects would pass constitutional muster and be easily enacted by the voters, but then

adds to the petition a provision, often 'hidden' deep within, that is less popular.").

The Petition does not "try[] to hide an unrelated and unpopular change within the initiative petition with the hope that the electorate decides the more popular change is worth the adoption of the less popular one." *Helton*, 512 P.3d at 315. It cannot be persuasively argued that applying a 36 percent interest rate cap to payday loans is any more or less popular than applying such a cap to litigation funding transactions made by Preferred Capital (which already carry a 40 percent interest rate cap—*see* NRS 604C.310), or to for-profit advances on earned wages made by DailyPay or ActiveHours.

Logrolling cannot exist where all the subjects are brought within the same ambit of the same interest rate limitation, at the same level and in the same way, subject to the same enforcement safeguards and penalties for violation. A logrolling objection here simply is not a tenable legal argument.

C. The Petition's Description Of Effect Is Legally Adequate

An initiative's description of effect "must be straightforward, succinct, and nonargumentative, and it must not be deceptive or

misleading." *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. at 41 (internal quotation marks and citation omitted). The purpose of the description of effect of an initiative is to inform signatories to the initiative petition about the petition's subject; it does not serve as the full, detailed explanation, including arguments for and against, that voters receive prior to a general election. *Helton*, 512 P.3d at 317–18. Because the description of effect of an initiative petition is limited to only 200 words, it cannot constitutionally be required to delineate every effect that an initiative will have; to conclude otherwise could obstruct, rather than facilitate, the people's right to the initiative process.

An "adequate" description makes a "legitimate effort to summarize what [the proponent] believes to be the Initiative's main components," noting that requiring petitions to describe "every detail or effect that an initiative may have… would significantly hinder the people's power to legislate by initiative and effectively bar all but the simplest of ballot measures." *Educ. Initiative PAC*, 129 Nev. at 42–50; *see also id.* at 43.

The test for sufficiency of a description of effect is not whether Appellants are satisfied, but rather have the measure's proponents made good-faith efforts to describe the measures proposed in ways that

adequately inform the electorate in a brief space. "[I]t is inappropriate to parse the meanings of the words and phrases used in a description of effect as closely as we would statutory text." *Educ. Initiative PAC*, 129 Nev. at 48. Instead, courts "must determine whether the description provides an expansive view of the initiative, rather than undertaking a hyper-technical examination of whether the description covers each and every aspect of the initiative" by examining "the meaning and purpose of each word and phrase contained in the description." *Id.* at 49. Nevada law requires a description that provides a "straightforward, succinct, and nonargumentative summary of what the initiative is designed to achieve and how it intends to reach those goals." *Helton*, 512 P.3d at 316. Nothing more is required, and the Petition's description of effect readily complies.

This description very simply and directly describes the interest-rate cap, the types of transactions regulated by the cap, and the mechanisms in place to prevent the evasion of the cap. It is written in factual, non-argumentative language that any Nevadan can understand, which is the main goal of any such communication.[8]

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[8] The term "predatory," which so exercises several of the Appellants, does not appear in the description, and would likely be considered argumentative if it did.

It cannot be argued, for instance, that the phrase "currently, most consumer loans have no interest rate cap" is anything other than an accurate and objective statement of current Nevada law. It cannot be seriously argued (though NFFC tries) that the description does not discuss the enforcement mechanisms that prevent evasion of the interest rate cap, including the safeguards against masking of transactions or importing interest rates form out of state. In Nevada, "everyone is presumed to know the law, and this presumption is not even rebuttable." *Smith v. State*, 38 Nev. 477, 481, 151 P. 512, 512 (1915). Therefore, not only does the Petition have within it the provisions regarding DIDMCA, when NFFC demands a full discussion of that law it is attempting to cram into the description matters that are both complicated and legally unnecessary. If Appellants want to devote all their time and energy from this point forward to raising public awareness of the virtues of Nevada's continued adherence to DIDMCA, they are free to do so, but for the purposes of a description of effect in an initiative petition, the current language is more than sufficient. In fact, the entire portion of the descriptions regarding how they "prohibit evading the interest rate cap" is devoted to this issue specifically, in fully-comprehensible language,

and includes reference to the Petitions' enforcement mechanisms. Prospective petition signers, therefore, will have an explanation of the provisions preventing financiers from avoiding the 36 percent interest rate cap, and will have in hand the text of the measure itself.

Any opponent of a filed ballot measure petition could argue that *their* specific concerns should be addressed in the descriptions, but this is not the function of the description requirement. Furthermore, most ballot initiatives "will have a number of different effects if enacted, many of which are hypothetical in nature," and this Court has "previously rejected the notion that a description of effect must explain 'hypothetical' effects." *Educ. Initiative PAC*, 129 Nev. at 47 (quoting *Herbst Gaming, Inc. v. Heller*, 141 P.3d 1224, 1232, 122 Nev. 877, 889 (2006)). This is because,

> [w]ith so few words in which to explain the effect of an initiative petition, a challenger will always be able to find some ramification of or provision in an initiative petition that the challenger feels is not adequately (addressed in the description of effect…. [T]he sufficiency of a description of effect depends not on whether someone 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.

Helton, 512 P.3d at 317–18 (footnote omitted) (quoting *Educ. Initiative*

PAC, 129 Nev. at 37); *see also Herbst Gaming, Inc.*, 122 Nev. at 889 ("A ballot measure's summary and title need not be the best possible statement of a proposed measure's intent or address every aspect of a proposal.").

Nevada caselaw is clear: "[I]t is inappropriate to parse the meanings of the words and phrases used in a description of effect as closely as we would statutory text." *Educ. Initiative PAC*, 129 Nev. at 48. Instead, courts "must determine whether the description provides an expansive view of the initiative, rather than undertaking a hyper-technical examination of whether the description covers each and every aspect of the initiative" by examining "the meaning and purpose of each word and phrase contained in the description." *Id.* at 49. It is exceedingly easy for

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

Educ. Initiative PAC, 129 Nev. at 47 (emphasis added).

Instead, what the law requires is a description that provides a "straightforward, succinct, and nonargumentative summary of what the

initiative is designed to achieve and how it intends to reach those goals." *Helton*, 512 P.3d at 316. Nothing more is required, and the Petition's description of effect complies here.

D. The Petition Contains The Full Text Of The Proposal

Under Article 19, Section 3(1) of the Nevada Constitution, ballot measure proponents are required to "include the full text of the measure proposed" with their petition. Nev. Const. art. 19, § 3. Appellants here make a "full-text" argument against the Petition, claiming that some other statutory text beyond that which Respondents have proposed must be included with it. It is unsurprising that they cannot point to Nevada case law authority supporting the claim; no such authority exists. There is no requirement to include the text of any other Nevada statute to which a Petition's provisions may relate, which would make initiative petitions ridiculously long, unnecessarily complex, and incredibly burdensome to propose. This would be novel and dangerous ground upon which to invalidate a proposed initiative measure, unsupported by any existing authority. In fact, no filed ballot measure petition in Nevada history has been held to such an implausible standard. Most recently, in the case of 2022's Better Voting Nevada Initiative, at issue in *Helton*, which would

cause the immediate repeal of dozens of election laws, the petition's text included none of them, and its description mentioned none, either.[9]

Here, as the district court found, the Petition contains every provision that is proposed to be circulated for signatures and considered by the electorate. In ruling the full-text requirement has been violated here, the Court would be breaking with historical jurisprudence to strike down a lawfully-proposed initiative petition, an interpretation for which no justification exists. Any initiative opponent could, if pressed, come up with reasons why another provision of law should have been appended to a particular ballot measure petition, and thereby interfere with the rights of proponents to engage in direct democracy, as well as prolong and multiply litigation designed to block the measure.

Supporting the notion that it is not incumbent upon an initiative's opponent to append such speculative material to a petition, the Nevada

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[9] This Court's recent unpublished decision in *Schools Over Stadiums v. Thompson*, 548 P.3d 775 (Nev. 2024) (unpublished disposition), the only decision or order to treat the full-text requirement in any depth, concerned a referendum whose proponents had re-ordered and omitted provisions of the "measure proposed," and therefore does not have much persuasive value helpful to Appellants in the present context. Respondents attach *Schools Over Stadiums v. Thompson* hereto as Exhibit A.

Legislature has determined where, when, and by whom exactly that information is to be included in the ballot measure process. In its capacity to "provide by law for procedures to facilitate the operation" of the initiative process,[10] the Legislature has expressly determined that, along with an appropriate condensation of a ballot question, explanations, helpful (and partisan) arguments for and against a particular measure, rebuttals thereto, and an accompanying fiscal note, the Nevada Secretary of State must prepare and include in ballot materials a "digest" that features "**a concise and clear summary of any existing laws directly related to the constitutional amendment or statewide measure and a summary of how the constitutional amendment or statewide measure adds to, changes or repeals such existing laws**." NRS 293.250(5) (emphasis added). There is no basis, therefore, for making that the duty of petition proponents under Article 19, Section 3(1), where existing statutory law seems to establishes affirmatively that it is the duty of the Secretary of State. Appellants' full-text argument is a policy plea, not a legal requirement with which Respondents must

[10] Nev. Const. art. 19, § 5.

comply in order to exercise their constitutional right to the initiative process.

So when DailyPay argues that the entirety of S.B. 290 (2023) must be appended to the Petition, or when NFFC claims that the Petition actually must include the text of every other Nevada statute with which their provisions may possibly interact, they are levelling unpersuasive legal arguments and deliberate impediments to the exercise of a fundamental right, in no way supported by the text of Article 19, Section 3. Not only are these interpretations atextual, they would make initiative petitions ridiculously long, unnecessarily complex, and incredibly burdensome to propose. Any opponent could claim that the provisions of a petition interact with some other statute, and demand it be included in the petition packet.

Much more to the point, Appellants talk about how the Petition would "amend" or "repeal" some other extant statute besides what is already included in its text. That is not actually true, as any student of statutory interpretation understands. If two statutes arguably interact without express repeal, potentially with preclusive or conflicting applications, the result is not immediate repeal of one by the other. It is,

instead, a process of judicial interpretation, in a lawsuit, brought at the appropriate time and in the appropriate manner. "Implied repeal" is a matter of interpretation, as this Court well knows.

Repeal by implication "is heavily disfavored," and the Court "will not consider a statute to be repealed by implication unless there is no other reasonable construction of the two statutes." *Washington v. State*, 117 Nev. 735, 739, 30 P.3d 1134, 1137 (2021). The Court "will look to the text of the statutes, legislative history, the substance of what is covered by both statutes, and when the statutes were amended." *Id.* In weighing its interpretation, the Court considers whether "a statute is enacted after another statute, but is subsequently amended without mention of the first statute" which "may weigh against a finding of legislative intent to repeal by implication." *Id.* The notion that the impact this Petition may eventually be found to have upon other statutes—whether S.B. 290, or some provisions of NRS Chapter 604C, or any of the provisions to which NFFC refers—after thorough argument and briefing in some future lawsuit (possibly even brought by these Appellants) cannot possibly be considered predictable enough to require discussion of "repeal" in a description of effect, much less sufficiently certain to demand the Petition

be invalidated for not including the text of statutes outside of its express terms.

The Petition includes "the full text of the measure proposed, compliant with Article 19, Section 3, and every provision that is proposed to be circulated for signatures and considered by the electorate.

VI. CONCLUSION

Based upon the foregoing, the Court should affirm the district court and determine that the Petition is legally valid.

DATED this 17th day of September, 2024.

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CERTIFICATION OF ATTORNEY

I hereby certify that this brief complies with the formatting requirements of N.R.A.P. 32(a)(4), the typeface requirements of N.R.A.P. 32(a)(5), and the type style requirements of N.R.A.P. 32(a)(6), because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in a 14-point Century Schoolbook font.

I further certify that this brief complies with the type-volume limitation of N.R.A.P. 32(a)(7) because, excluding the parts of the brief exempted by N.R.A.P. 32(a)(7)(C), it is proportionally spaced, has a typeface of 14-point or more, and contains 8,383 words.

Pursuant to N.R.A.P. 28.2, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular N.R.A.P. 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 17th day of September, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of September, 2024, a true and correct copy of **RESPONDENTS' OMNISBUS ANSWERING BRIEF** was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system:

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

EXHIBIT A

EXHIBIT A

548 P.3d 775 (Table)
Unpublished Disposition
This is an unpublished disposition. See Nevada Rules of Appellate Procedure, Rule 36(c) before citing.
Supreme Court of Nevada.

SCHOOLS OVER STADIUMS, a Nevada Committee for Political Action; Dawn Etcheverry, an Individual; Christopher Daly, an Individual; and Andrea DeMichieli an Individual, Appellants,

v.

Danny THOMPSON, an Individual; Thomas Morley, an Individual; and Francisco V. Aguilar, in His Official Capacity as Nevada Secretary of State, Respondents.

No. 87613
|
Filed May 13, 2024

This is an appeal from a district court judgment in a declaratory and injunctive relief action challenging a ballot referendum. First Judicial District Court, Carson City; James Todd Russell, Judge.

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ORDER OF AFFIRMANCE

***1** In the 35th Special Legislative Session, the Nevada Legislature passed Senate Bill No. 1 (S.B. 1) authorizing the Clark County Stadium Authority to build a Major League Baseball stadium in Clark County and to establish a method to finance the stadium's construction. *See* S.B. 1, 35th Special Session Ch. 1 (Nev. 2023). S.B. 1, as passed, contains a total of 46 sections. In September 2023, appellant Schools Over Stadiums PAC (SOS) filed a notice of intent to circulate a petition to place a referendum (the Stadium Referendum) asking voters to disapprove select portions of S.B. 1 on the November 2024 general election ballot. Specifically, the Stadium Referendum seeks to strike S.B. 1's sections authorizing or committing State funds to finance the stadium project. Accordingly, the Stadium Referendum asks voters to approve or disapprove only those sections of S.B. 1 that reference State funding.

Respondents Danny Thompson and Thomas Morley (collectively, Thompson) filed a complaint seeking injunctive and declaratory relief.[1] The district court granted the requested relief, declaring the Stadium Referendum invalid because it (1) violates the full text requirement of Article 19, Section 3 of the Nevada Constitution; and (2) contains a legally inadequate description of effect. The district court also granted injunctive relief, enjoining SOS from circulating the petition to collect signatures, invalidating any previously collected signatures, and enjoining the Secretary of State from placing the Stadium Referendum on the ballot. This appeal followed.

The petition violates the full-text requirement of the Nevada Constitution

Having considered the parties' briefs and appendices and having heard oral argument, we conclude that the district court did not err in granting Thompson's requested relief. *See Educ. Init. PAC v. Comm. to Protect Nev. Jobs,* 129 Nev. 35, 41, 293 P.3d 874, 878 (2013) ("When a district court's decision to grant declaratory and injunctive relief depends on a pure question of law, our review is de novo."); *Peck v. Zipf*, 133 Nev. 890, 892, 407 P.3d 775, 778 (2017) (" '[Q]uestions of law, including questions of constitutional interpretation and statutory construction,' are reviewed de novo." (quoting *Lawrence v. Clark Cnty.*, 127 Nev. 390, 393, 254 P.3d 606, 608 (2011))).

The Stadium Referendum seeks to refer S.B. 1 to the voters for approval or disapproval of the State's funding obligations under that bill. Though a person may refer only part of a statute or resolution to a vote of the people, *see* Nev. Const. art. 19 § 1(1) (providing that a person may "circulate a petition that a statute or resolution *or part thereof* ... be submitted to a vote of the people") (emphasis added), "[e]ach referendum petition ... shall include the full text of the measure proposed." *Id.,* art. 19 § 3(1); *see also* NRS 295.0575(6) (requiring the circulator of a referendum petition to swear "[t]hat each signer had an opportunity before signing to read the full text of

the act or resolution on which ... referendum is demanded"). "[T]he 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 Convention & Visitors Auth. v. Miller*, 124 Nev. 669, 686, 191 P.3d 1138, 1149 (2008). Although the dissent cites *Schnell v. Appling*, 395 P.2d 113 (Or. 1964) to support its view of what constitutes the "full text of the measure proposed," we note that Oregon's Constitution, unlike Nevada's Constitution, only requires the full text of a proposed measure be included with initiative petitions, not referendums. *Compare* Or. Const. art. IV, § 1(2)(d) (requiring "[a]n initiative petition [to] include the full text of the proposed law or amendment to the Constitution") *and* Or. Const. art. IV, § 1(3) (listing procedural requirements for referendum petitions) *with* Nev. Const. art. 19, § 3(1) (requiring the "full text of the measure proposed" for both initiative and referendum petitions); *see also Kerr v. Bradbury,* 89 P.3d 1227, 1232-33 (Or. 2004) (discussing *Schnell* and the enactment history of Oregon's full text requirement). Considering the purpose and language of the full-text requirement and the language of the particular petition at issue here, we conclude that S.B. 1 must be included in the petition in its entirety to provide voters the complete context of the proposed measure so that they can understand what the law is now and what the law will be should they approve or disapprove the parts of S.B. 1 that are being submitted to a vote of the people.[2]

The petition's description of effect is inadequate

***2** NRS 295.009(1)(b) requires referendum petitions to "[s]et forth, in not more than 200 words, a description of the effect of the ... referendum if the ... referendum is approved by the voters." A petition's description of effect "must be a straightforward, succinct, and nonargumentative summary of what the [referendum] is designed to achieve and how it intends to reach those goals." *Educ. Init. PAC,* 129 Nev. at 37, 293 P.3d at 876. Further, the description of effect must "not be deceptive or misleading." *Id.* at 42, 293 P.3d at 879.

> The description of effect at issue here reads as follows:
>
> SB 1 established a financing process to construct a Major League Baseball stadium in Clark County, using up to $380 million taxpayer dollars. Section 29 pledged State taxes and Clark County taxes to pay bonds to be issued by Clark County; Section 30 created a State credit enhancement (line of credit), initially funded by Section 41, for Clark County to draw upon to pay the bonds; the Legislature did not pledge the full faith and credit of the State and reserved the right to change parts of Section 29 (pledged State taxes) and all of Section 30 (State credit enhancement). This petition demands that the pledge of State (not Clark County) taxes and the use of the State's credit to pay the stadium bonds be subject to a vote of the People. If a majority of voters disapprove these components of SB 1, the bracketed and struck through portions shown on this petition would be voided, which could result in the stadium not being built. If a majority of voters approve these sections of SB 1, these sections would remain as enacted by the Legislature and could not be changed or repealed except by direct vote of the People.

This description explains the general effect of a referendum, but it does not describe the practical effects of this specific referendum. The description is also misleading. For example, the statement that S.B. 1 allows Clark County to use "up to $380 million taxpayer dollars" suggests that these are existing State funds being used to build the stadium and does not inform signers that a portion of those funds are to be generated from specified sources within the sports and entertainment improvement district. Thus, it fails to straightforwardly and succinctly inform signatories about what the referendum proposes and thereby fails to "prevent voter confusion and promote informed decisions." *Educ. Init. PAC*, 129 Nev. at 42-43, 293 P.3d at 879-880 (quoting *Nevadans for Nevada v. Beers,* 122 Nev. 930, 939-40, 142 P.3d 339, 345 (2006)). We therefore conclude that the district court properly found the description of effect is inadequate.

Because the petition violates the constitution's full-text requirement and the description of effect does not comply with statutory requirements, we conclude the district court properly enjoined SOS from circulating the petition and the Secretary of State from placing the petition on the general election ballot. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

PICKERING, J., dissenting:

S.B. 1 was passed into law by special session of the Nevada Legislature in June of 2023. As enacted, S.B. 1 contains 46 separate sections and spans 66 single-spaced pages. The Stadium Referendum only asks voters to weigh in on those sections of S.B. 1 that provide for state-level credit and financial support for the Major League Baseball stadium, and it reprints in full those sections concerning these matters that it proposes voters disapprove. I submit that this satisfies the Nevada Constitution's requirement that the referendum

include the "full text of the measure proposed." I would also find the description of effect adequate. Limited by law to 200 words, the description of effect conveys that, if approved, the Stadium Referendum would withdraw State credit and financial support for the stadium project, which in turn could prevent the stadium from being built. For these reasons, I would reverse, not affirm, and therefore respectfully dissent.

***3** Article 19, Section 1 of the Nevada Constitution provides that a referendum petition can seek a vote of the people as to "a statute ... or *part thereof* enacted by the legislature." Nev. Const. art. 19, § 1(1) (emphasis added). Article 19, Section 3, in turn, requires that a referendum petition "include the full text of *the measure proposed*." As noted in *Coalition for Nevada's Future v. RIP Commerce Tax, Inc.*, "the Nevada Constitution requires no particular form for a referendum petition, except that it include the full text of the proposed measure." No. 69501, 2016 WL 2842925 at *2 (Nev. May 11, 2016) (Order Affirming in Part, Reversing in Part, and Remanding). The referendum petition in that case, which, like here, presented only select sections of an enacted bill to the voters for approval or disapproval, met this "full-text" standard. *See id.* In addressing a similar constitutional "full-text" provision for referendum petitions, the Supreme Judicial Court of Massachusetts has concluded that "the full text of the ... measure proposed by the petition" means only "the proposed law in the[ ] precise terms that will become law if adopted." *Opinion of the Justices,* 34 N.E.2d 431, 433-34 (Mass. 1941). The Supreme Court of Oregon has also addressed a similar "full-text" provision, reasoning that "[n]o useful purpose would be served by quoting at length either the related statutes referred to in the proposed measure but left unchanged thereby or the statutes to be repealed thereby." *Schnell v. Appling,* 395 P.2d 113, 114 (Or. 1964). A ballot initiative petition "must carry the exact language of the proposed measure. It need include nothing more." *Id.; cf.* 1A Sutherland Statutory Construction, *Amendment of an act by reference to its title* § 22:28 (7th ed. 2009) ("If ... less than all [sections of an act] are amended, it is sufficient to set out as amended such section or sections, without setting out the entire act as amended. This is true although other sections of the act are amended by implication ....").

Reading and harmonizing Article 19, Sections 1 and 3 of the Nevada Constitution together, as we should, achieves a similar result: a referendum petition submitting a portion of a statute to a vote of the people requires only that portion of the statute be included in the referendum petition, and "nothing more." *Schnell,* 395 P.2d at 114; *see also We the People Nevada ex rel. Angle v. Miller,* 124 Nev. 874, 881, 192 P.3d 1166, 1171 (2008) ("when possible, the interpretation of a statute or constitutional provision will be harmonized with other statutes or provisions to avoid unreasonable or absurd results").

The "measure proposed" by the Stadium Referendum is to remove the State from any baseball stadium credit support or other funding obligations. It follows that to meet the "full text of the measure proposed" requirement, the voters need only see what is being changed—those select portions of S.B. 1 that are being proposed for the people's consideration. *See Proposal,* Black's Law Dictionary (11th ed. 2019) (defining "proposal" as "[s]omething offered for consideration or acceptance"). The Referendum attaches the full-text of each section it refers to the voters, with the language it asks voters to disapprove shown by conventional strike-outs. Voters do not need to understand, much less to read, all 46 sections and 66 pages of S.B. 1 to consider whether to approve or disapprove the State's stadium funding obligations. By interpreting Article 19, Section 3's "full text requirement" as demanding the inclusion of provisions that are not being submitted to a vote of the people, the district court improperly "read language into the [Constitution] that it does not contain ..." *Legis. of Nev. v. Settelmeyer,* 137 Nev. 231, 237, 486 P.3d 1276, 1282 (2021). By affirming the district court's error, the majority ignores the plain text of the Nevada Constitution and imposes a new form requirement for referendum petitions that we previously held did not exist. *See RIP Commerce Tax*, 2016 WL 2842925 at *2. I would thus conclude that the Stadium Referendum complies with the Nevada Constitution's full-text requirement.

I also disagree with the majority's conclusion that the Stadium Referendum's description of effect is legally deficient. "[T]he sufficiency of a description of effect depends not on whether someone 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.' " *Helton v. Nev. Voters First PAC*, 138 Nev., Adv. Op. 45, 512 P.3d 309, 317-18 (2022) (quoting *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013)). Given the 200-word limit, I believe that the Stadium Referendum's description of effect fairly describes the referendum process and the general effect it would have: If the voters vote to disapprove the sections of S.B. 1 it seeks referendum on, it would remove State financial support for the stadium project, and removing that support could jeopardize

the project and result in the stadium not being built. Although "a challenger will always be able to find some ramification ... or provision" which it feels is not adequately addressed, *Helton*, 138 Nev., Adv. Op. 45, 512 P.3d at 317, a "description of effect cannot constitutionally be required to delineate every effect that a [referendum] will have ...." *Educ. Initiative,* 129 Nev. 35, 37-38, 293 P.3d 874, 876. Thus, I would conclude that the description of effect is legally sufficient.

***4** I dissent.

LEE, J., concurring in part and dissenting in part:

I concur with those portions of the majority's decision discussing the petition's inadequate description of effect in violation of NRS 295.009(1)(b). However, I do not agree with the majority's conclusion that the petition violated Nevada Constitution article 19, section 3(1) by failing to put forth the "full text of the measure proposed." Accordingly, I join the dissent's order as it pertains to the full text requirement.

All Citations

548 P.3d 775 (Table), 2024 WL 2138152

Footnotes

1 The Secretary of State was listed as a defendant but did not file an answer and took no position on the matter at the hearing. Likewise, the Secretary has filed an answering brief on appeal that takes no position.

2 To the extent the dissent relies on *Coalition for Nevada's Future v. RIP Commerce Tax, Inc.,* No. 69501, 2016 WL 2842925 at *2 (Nev. May 11, 2016) (Order Affirming in Part, Reversing in Part, and Remanding), as an example of a referendum petition presenting less than all sections of a bill to the voters for approval or disapproval, we note that the parties in *RIP Commerce Tax* did not raise the issue of whether the petition also complied with Section 3's full text requirement.