

**IN THE SUPREME COURT OF  
THE STATE OF NEVADA**

DAILYPAY, INC., et al.,

Appellants,

v.

KATE FELDMAN, et al.,

Respondents.

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Case No. 88557

**APPELLANTS NEVADANS FOR FINANCIAL CHOICE AND  
CHRISTINA BAUER'S (1) SUGGESTION OF MOOTNESS AND  
(2) RESPONSE TO RESPONDENTS' MOTION TO EXPEDITE  
DECISION AND FOREGO ORAL ARGUMENT**

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## I. INTRODUCTION

Despite this Court's prior order setting an expedited briefing schedule stating that it "will expedite its consideration of this matter to the extent that its docket permits" and reserving the determination of oral argument for a later date,<sup>1</sup> Respondents Kate Feldman and Stop Predatory Lending NV ("Feldman") seek (yet again) expedited consideration of this appeal. But now, they also ask this Court to forego oral argument despite previously expressly seeking oral argument in this appeal.<sup>2</sup> But Feldman's motion essentially reveals that this case is moot as she functionally concedes that she is not gathering signatures. As this Court has made clear, an initiative becomes moot if its proponents fail to submit sufficient signatures to obtain ballot access.

More troubling, by seeking relief despite not actively gathering signatures, Feldman essentially reveals that her objective is an improper advisory opinion. But this Court has rejected previous attempts to obtain such advisory opinions and should do so here. Accordingly, this Court should deny Feldman's motion and it should issue an order to show cause as to why this Court should not dismiss this case as

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<sup>1</sup> *DailyPay, Inc., et al. v. Feldman, et al.*, No. 88557, at \*3 (Order Regarding Motions July 11, 2024).

<sup>2</sup> *DailyPay, Inc.*, No. 88557, at \*7 (Respondents' Motion for Expedited Consideration of Appeal June 10, 2024).

moot. At worst, this Court should deny the motion and determine, after briefing is complete, whether oral argument is warranted.

## II. ARGUMENT

"This [C]ourt will not render advisory opinions on moot or abstract questions." *Applebaum v. Applebaum*, 97 Nev. 11, 12, 621 P.2d 110, 110 (1981); *see also City of N. Las Vegas v. Cluff*, 85 Nev. 200, 201, 452 P.2d 461, 462 (1969) (declining to review a challenge to an initiative when no actual controversy existed). An initiative becomes moot where the proponent "fail[s] to submit sufficient signatures on the initiative petition" to county clerks by the submission deadline, as that failure "render[s] the proposed initiative ineligible . . . regardless of [this Court's] decision." *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010); *Kerr v. Bradbury*, 131 P.3d 737, 740 (Or. 2006) (dismissing as moot a petition for review when the proponents of a ballot measure failed to collect sufficient signatures to place the initiative on the ballot). And this Court will not resolve the petition even if the proponent plans to submit a similar (or identical) initiative in the future, as that would be an improper advisory opinion. *Personhood Nev.*, 126 Nev. at 603, 245 P.3d at 575.

Feldman's functional concession that she has not begun to gather the signatures indicates that this appeal moot. Feldman acknowledges the deadline to submit signatures is November 20, 2024 – a little more than two months from now.

Mot. at 4. She also concedes that she must obtain at least 102,362 valid signatures. *See id.*; *see also* Secretary of State, *Initiatives & Referenda*, <https://www.nvsos.gov/sos/elections/initiatives-referenda> (last visited Sept. 18, 2024).<sup>3</sup> And, while even acknowledging that "the district court did not enjoin Respondents from gathering signatures while this appeal proceeded," Feldman admits that she did not gather signatures. *See* Mot. at 4. Rather, Feldman protests that "the uncertainty of a pending appeal is costly and potentially threatens the overall effort" of gathering signatures, which requires this Court to "issue its disposition well in advance of the deadline for signature submissions" so that Feldman may begin to obtain signatures. *See id.* at 4-5.

But Feldman's delay in seeking signatures does not justify this Court foregoing oral argument without the benefit of full briefing. If anything, it warrants dismissing this appeal as moot because there is no live controversy. *See Personhood Nev.*, 126 Nev. at 603, 245 P.3d at 574-75 & 575 n.3 (concluding that an appeal is moot when the initiative proponents failed to gather sufficient signatures for the petition, and rejecting proponents argument that the district court injunction prohibited proponents from gathering signatures because it "enjoined the Secretary

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<sup>3</sup> This Court may take judicial notice of the Secretary's determination of the total number of signatures that ballot initiative proponents must obtain. *See Peardon v. Peardon*, 65 Nev. 717, 737, 201 P.2d 309, 319 (1948) (recognizing that courts may "take judicial notice of the official acts of the head of an executive department or agency of the government, of general public interest").

of State from placing the matter on the ballot, not the collection of signatures"). Any desire to place a similar (if not identical) petition on a future ballot is irrelevant. *Id.*, 245 P.3d at 575 ("As for appellants' plan to file a similar initiative petition in 2012, addressing a potential future initiative at this point would be speculative and lead to an improper advisory opinion."). Accordingly, this Court should consider dismissing this appeal based on Feldman's admission that she is not and did not gather signatures.<sup>4</sup>

Regardless of whether this Court concludes that the appeal is moot, it should nonetheless deny Feldman's motion. Briefing will be complete no later than October 1, 2024, which allows this Court to set this matter for the October 8, 2024 en banc argument session or otherwise set a special setting. And this Court often issues orders or opinions in initiative or referenda appeals in a matter of weeks. *See Feldman v. Aguilar*, No. 88526 (oral argument held on June 5, 2024, and dispositional order issued on June 20, 2024); *Fleischmann v. Aguilar*, No. 88307 (oral argument held May 8, 2024, and dispositional order issued on May 24, 2024); *Fair Maps Nev. v. Jeng*, No. 88263 (oral argument held April 11, 2024, and dispositional order issued May 10, 2024); *Schools Over Stadiums v. Thompson*,

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<sup>4</sup> Dismissing the appeal as moot would eliminate any preclusive effect of the lower court judgment. *Personhood Nev.*, 126 Nev. at 605, 245 P.3d at 576 ("[I]n Nevada, when an appeal is dismissed as moot by no fault of the appellant, the lower court's determination of an issue in the matter will have no preclusive effect in future litigation.").

No. 87613 (oral argument held April 10, 2024, and dispositional order issued on May 13, 2024). Thus, should Feldman be gathering signatures (as she has been able to do since she filed her petition in January), there is ample time for this Court to hold oral argument (should it deem argument necessary) and issue an order in advance of the November 20, 2024 deadline to submit signatures.

To the extent that Feldman asserts oral argument is not necessary because the oral argument and briefing on the companion initiative "pertained to the provisions of Petition S-03-2024 as well," Mot. at 5, her argument misses the mark. While Nevadans for Financial Choice agrees that S-03-2024, like its companion initiative, violates Nevada law governing ballot initiatives, this Court addressed only S-01-2024's single-subject violations. *Feldman v. Aguilar*, No. 88526, 2024 WL 3083271, at \*1 (Nev. June 20, 2024) (concluding that "the district court did not err in determining that the Initiative violates the single-subject rule" and stating that "[g]iven that conclusion, we need not address the parties' other arguments"). Thus, the oral argument and briefing – which addressed S-01-2024, not S-03-2024 – may not provide sufficient information for this Court to resolve the appeal as to S-03-2024. Accordingly, this Court should deny Feldman's motion and, after briefing is complete, determine whether oral argument is appropriate.<sup>5</sup>

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<sup>5</sup> Feldman's gratuitous comments regarding Appellants' belief that the issues presented in this appeal require this Court's deliberation and potential oral argument, *DailyPay, Inc.*, No. 88557, at \*2 (Respondents' Reply in Support of Motion to

### III. CONCLUSION

This Court should deny Feldman's motion and issue an order to show cause as this appeal appears moot. It appears that Feldman has no intention of actually gathering signatures and is just plying for an advisory opinion. Alternatively, this Court should deny the motion and, once briefing is complete, schedule oral argument as appropriate.

DATED this 20th day of September, 2024.

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Expedite Decision and Forego Oral Argument Sept. 18, 2024), are irrelevant. This Court alone may determine whether oral argument may assist it in any specific case. *See, e.g., Feldman*, No. 88526, at \*1 (Order Scheduling Oral Argument Apr. 29, 2024) ("This [C]ourt has determined that oral argument would be of assistance in resolving the issues presented in this matter.").

## CERTIFICATE OF COMPLIANCE

I hereby certify that this Motion complies with the formatting requirements of NRAP 27(d) and NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the typeface requirements of NRAP 32(a)(6) because this Motion has been prepared in a proportionally spaced typeface using Office Word 2013 in size 14 font in Times New Roman.

I further certify that I have read this Motion and it complies with the page- or type-volume limitations of NRAP 27(d)(2)(A) because it is proportionately spaced, has a typeface of 14 points or more, and contains 1,364 words.

DATED this 20th day of September, 2024.

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Pisanelli Bice, PLLC, and that on this 20th day of September 2024, I electronically filed and served through the Court's e-filing/e-service website a true and correct copy of the above and foregoing **APPELLANTS NEVADANS FOR FINANCIAL CHOICE AND CHRISTINA BAUER'S (1) SUGGESTION OF MOOTNESS AND (2) RESPONSE TO RESPONDENTS' MOTION TO EXPEDITE DECISION AND FOREGO ORAL ARGUMENT** to all parties registered for service.

*/s/ Kimberly Peets*  
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An employee of Pisanelli Bice PLLC