

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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**APPELLANT DAILYPAY, INC.'s REPLY BRIEF**

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## **NRAP 26.1 DISCLOSURE**

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that there are no persons or entities as described in NRAP 26.1(a) that must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

The following law firm has appeared and/or is expected to appear in this Court on behalf of Respondents:

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

DATED this 1st day of October 2024.

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**TABLE OF CONTENTS**

NRAP 26.1 DISCLOSURE.....i

TABLE OF AUTHORITIES.....iv

JURISDICTIONAL STATEMENT ..... 1

ROUTING STATEMENT..... 1

STATEMENT OF THE ISSUES ON APPEAL ..... 2

I. Whether Petition S-03-2024 violates Nevada’s “single-subject” rule by proposing to restrict products that are not loans, and to punish entities that are not lenders, pursuant to a proposed “Preventing Predatory Lending and Other Loans Act.” ..... 2

II. Whether Petition S-03-2024’s 113-word description of effect is misleading, argumentative, and legally deficient under NRS 295.009(1)(b)..... 2

III. Whether Petition S-03-2024 is deficient for failing to include the full text of NRS Chapter 604D, codifying SB 290 (Nev. 2023) which the Petition seeks to effectively repeal. .... 2

INTRODUCTION..... 3

SUMMARY OF THE ARGUMENT ..... 7

ARGUMENT ..... 8

I. Standard of Review ..... 8

II. Oral Argument Is Appropriate for This Court to Address Issues Not Raised In District Court. .... 9

III. The Petition Violates NRS 295.009’s Single-Subject Rule and Respondents’ Arguments to the Contrary do Not Rehabilitate the Petition’s Failure to Satisfy this Standard. .... 13

IV. The Petition’s Description of Effect Insufficiently Describes  
its Material Changes to Existing Law..... 17

V. The Petition Must Include the Full Text of NRS Chapter  
604D..... 22

CONCLUSION ..... 26

ATTORNEY’S CERTIFICATE OF COMPLIANCE ..... 28

## TABLE OF AUTHORITIES

<u>CASES</u>	<b>Page(s)</b>
<i>Caine v. Robbins</i> , 61 Nev. 416, 131 P.2d 516 (1942) .....	9
<i>Cegavske v. Hollowood</i> , 138 Nev. Adv. Op. 46, 512 P.3d 284 (2022) .....	9
<i>Educ. Initiative v. Cmte. to Protect Nev. Jobs</i> , 129 Nev. 35, 293 P.3d 874 (2013) .....	5, 18, 19
<i>Education Freedom PAC v. Reid</i> , 138 Nev. Adv. Op. 47, 512 P.3d 296 (2022) .....	19, 22
<i>Greater Las Vegas Chamber of Commerce v. Del Papa</i> , 106 Nev. 910, 802 P.2d 1280 (1990) .....	9
<i>Helton v. Nev. Voters First PAC</i> , 138 Nev. Adv. Op. 45, 512 P.3d 309 (2022) .....	8
<i>Las Vegas Conv. &amp; Visitors Auth. v. Miller</i> , 124 Nev. 669, 191 P.3d 1138 (2008) .....	25
<i>Las Vegas Taxpayer Accountability Cmte. v. City Council of City of Las Vegas</i> , 125 Nev. 165, 208 P.3d 429 (2009) .....	4, 13, 18
<i>Lundberg v. Koontz</i> , 82 Nev. 360, 418 P.2d 808 (1966) .....	10
<i>Nevadans for Nevada v. Beers</i> , 122 Nev. 930, 142 P.3d 339 (2006) .....	24
<i>Nevadans for Prop. Rights v. Sec’y of State</i> , 122 Nev. 894, 141 P.3d 1235 (2006) .....	13

<i>No Solar Tax PAC v. Citizens for Solar and Energy Fairness</i> , 132 Nev. 1012 (Aug. 4, 2016) (unpublished) .....	19
<i>Peck v. Zipf</i> , 133 Nev. 890, 407 P.3d 775 (2017) .....	8
<i>Prevent Sanctuary Cities v. Haley</i> , 134 Nev. 998, 421 P.3d 281 (May 16, 2018) (unpublished) .....	4, 19, 20, 21
<i>Schools Over Stadiums v. Thompson</i> , 548 P.3d 775 (Nev. 2024) (unpublished) .....	24, 25
<i>Stanfield v. State</i> , 99 Nev. 499, 665 P.2d 1146 (1983) .....	13

**STATUTES**

5 U.S.C. § 553(c) .....	10
NRAP 28(e)(1).....	28
NRAP 32(a)(4) .....	28
NRAP 32(a)(5) .....	28
NRAP 32(a)(6) .....	28
NRAP 32(a)(7) .....	28
NRAP 32(a)(7)(C).....	28
NRS 99.050.....	23
NRS 295.009 .....	passim
NRS 295.015 .....	23
NRS 295.0575 .....	23, 26
NRS 604D.050 .....	14
NRS 604D.090 .....	17

NRS 604D.190 ..... 3, 12, 14

NRS 604D.410 ..... 3, 12

NRS Chapter 604D..... passim

Preventing Predatory Payday and Other Loans Act..... 20

**OTHER AUTHORITIES**

89 Fed. Reg. 61358 ..... 10

89 Fed. Reg. at 61363 ..... 11

Nev. Const. Art. 4, § 17 ..... 6

Nev. Const. Art. 19, § 3 ..... 23, 25

Nev. Const. Art. 19, § 3(1) ..... 6

S.B. 290, 82nd Leg. (Nev. 2023) ..... 8, 22, 26

## **JURISDICTIONAL STATEMENT**

This Court has jurisdiction over the instant appeal under NRAP 3A(b)(1), as it is an appeal from a final order resolving all claims presented to the district court, and pursuant to NRAP 3A(b)(3), as it is an appeal from an order denying a request for declaratory and injunctive relief in a petition-related challenge under NRS 295.061. The district court entered its final order on April 16, 2024, and Appellants filed their notice of appeal on April 26, 2024, within NRAP 4(a)(1)'s prescribed 30-day period.

## **ROUTING STATEMENT**

Under NRAP 17(a)(2), this appeal is presumptively retained by this Court because it involves a ballot or election question.



## STATEMENT OF THE ISSUES ON APPEAL

- I. Whether Petition S-03-2024 violates Nevada’s “single-subject” rule by proposing to restrict products that are not loans, and to punish entities that are not lenders, pursuant to a proposed “Preventing Predatory Lending and Other Loans Act.”
- II. Whether Petition S-03-2024’s 113-word description of effect is misleading, argumentative, and legally deficient under NRS 295.009(1)(b).
- III. Whether Petition S-03-2024 is deficient for failing to include the full text of NRS Chapter 604D, codifying SB 290 (Nev. 2023) which the Petition seeks to effectively repeal.

## INTRODUCTION

Accepting Respondents’ arguments at face value, the Petition ostensibly proposes a single “overarching change...limiting interest rates on consumer loans.” Resp. Ans. Br., at 20. Assuming *arguendo* that Respondents’ claims are true, prohibitions on earned wage access services have no place in this Petition. Earned wage access services are not “consumer loans,”<sup>1</sup> and earned wage access service providers do not charge interest.<sup>2</sup> Accordingly, the Petition’s various proposed restrictions on earned wage access services are not “functionally related and germane to” the Petition’s stated purpose. The Petition violates NRS 295.009’s single-subject rule.

Respondents seek to circumvent the single-subject rule through their contention that the Petition permissibly defines various unrelated categories of transactions as “loans.” Resp. Ans. Br., at 11. If it were permissible to satisfy the single-subject rule by simply aggregating multiple disparate—even contradictory—subjects into a single definition, the single subject rule would be meaningless. This is why “an initiative

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<sup>1</sup> NRS 604D.190(1)(a).

<sup>2</sup> NRS 604D.190(1)(c); NRS 604D.410(1)(c).

proponent may not circumvent the single-subject rule by phrasing the proposed law’s purpose or object in terms of ‘excessive generality.’” *Las Vegas Taxpayer Accountability Cmte. v. City Council of City of Las Vegas*, 125 Nev. 165, 181, 208 P.3d 429, 439 (2009).

Even if combining unrelated subjects into a single definition could satisfy the single-subject rule, Respondents would still be obligated to accurately disclose to voters the Petition’s proposed significant changes to Nevada law. On this point, Respondents resort to a strawman argument that the description of effect cannot possibly explain “every detail or effect that an initiative may have.” Resp. Ans. Br., at 28. As Respondents well know, this is not the applicable standard. Nor does DailyPay argue that the description of effect must describe every hypothetical effect the Petition may have. “[W]hile the description of effect need not describe every effect adopting the initiative might have” judicial review of the description of effect must assess “whether the information contained in the description is correct and does not misrepresent what the initiative will accomplish and how it intends to achieve those goals.” *Prevent Sanctuary Cities v. Haley*, 134 Nev. 998, 421 P.3d 281 (May 16, 2018)

(unpublished) at \*3 (quoting *Educ. Initiative v. Cmte. to Protect Nev. Jobs*, 129 Nev. 35, 293 P.3d 874 (2013)).

The Petition’s description of effect is misleading and inaccurate because it does not correctly represent to voters the Petition’s actual, substantive, and material effects on existing law, particularly with regard to the proposed redefinition of the term “loan” to include entire categories of transactions that are not loans. If adopted, the Petition would fundamentally change existing Nevada law on earned wage access services under NRS Chapter 604D and penalize businesses and third parties with no connection to commercial lending: employers, payroll servicers, and other businesses that have nothing to do with lending. The description of effect misrepresents that it “addresses high-interest lending practices” without explaining to voters that the Petition seeks to substantially change Nevada law governing non-lending practices, that do not involve interest rates, and reaches these transactions by redefining what “loans” and “lending practices” are.

Finally, the Petition is invalid because it deprives voters of the opportunity to review the Petition’s actual and material changes to existing statutory language. The Petition does not allow voters to review

and assess its proposed changes in context of the laws the Petition will change. The Nevada Constitution expressly contemplates and prohibits this tactic, directing that “no law shall be revised or amended by reference to its title only; but in such case, the act as revised or section as amended shall be re-enacted and published at length,” and requiring that “[e]ach referendum and initiative petition shall include the full text of the measure proposed.” Nev. Const. art. 4, § 17; Nev. Const. art. 19, § 3(1).

Nevada voters are entitled to the full picture when initiative proponents ask them to change existing law at the ballot box. Voters deserve to know precisely how the Petition would change existing law and the Nevada Constitution entitles them to receive that information from the Petition itself. Voters deserve to read and review the proposed changes to existing statute, and to be notified regarding the interests that will be affected by the Petition’s penalties and restrictions, and how such interests will be affected. These basic protections safeguard the integrity of the initiative process, rather than frustrate it.

As drafted, the Petition falls far short of these basic protections, and this Court must not allow the Petition to proceed.

## SUMMARY OF THE ARGUMENT

The district court erred as a matter of law in holding that the Petition does not violate NRS 295.009's single-subject requirement. The Petition misleadingly asserts that its purpose is limited to "combatting predatory payday lending and other high-cost loans," when the Petition in reality goes much further to restrict products that are neither loans, nor credit, and to punish service providers and other parties that are not lenders or engaged in "lending practices." I AA 121-125. The Petition violates NRS 295.009(2)'s single-subject rule because the Petition's components do not functionally relate 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." NRS 295.009(2).

The district court also erred by upholding the Petition's description of effect, which makes no mention whatsoever of the Petition's material effects concerning earned wage access services and service providers. The Petition seeks to turn an entire statutory scheme—the entirety of NRS Chapter 604D—on its head. Yet, its description makes no reference to this material and significant change to Nevada law. I AA 131.

Finally, the district court erred as a matter of law in failing to require the Petition to include the full text of SB 290 (2023) (now codified at NRS Chapter 604D), which the Petition expressly seeks to amend and replace (and, in effect, to repeal). Nevada voters are entitled to review the Petition’s proposed changes in context with the statutory language it overwrites.

The district court should have enjoined the Petition as a matter of law. This Court should reverse the district court’s ruling and remand with instructions to enjoin the Petition’s circulation.

## ARGUMENT

### I. Standard of Review

This case concerns the interpretation and enforcement of NRS 295.009(1)-(2)’s single-subject and description-of-effect rules as applied to Petition S-03-2024 (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); *see also Helton v. Nev. Voters First PAC*, 138 Nev. Adv. Op. 45, 512 P.3d 309, 313 (2022) (applying *de novo* review to a petition challenge).

“[B]allot questions may be enjoined ‘where a plain, palpable violation of the constitution is threatened.’” *Greater Las Vegas Chamber of Commerce v. Del Papa*, 106 Nev. 910, 916, 802 P.2d 1280, 1281 (1990) (citing *Caine v. Robbins*, 61 Nev. 416, 427, 131 P.2d 516, 520 (1942)). “All of the cases in which [Nevada courts] have intervened to prevent a ballot question from going to a vote of the people have involved violations of the state constitutional or statutory rules governing the procedures by which those questions were placed on the ballot.” *Id.* (listing cases); *see also*, *Cegavske v. Hollowood*, 138 Nev. Adv. Op. 46, 512 P.3d 284, 292 (2022) (citing *Greater Las Vegas Chamber* for the proposition that “this court has intervened to prevent a ballot question from going to a vote of the people where a procedural violation was present”).

## **II. Oral Argument Is Appropriate for This Court to Address Issues Not Raised In District Court.**

At the outset, DailyPay respectfully submits that oral argument is appropriate to address substantive issues the district court did not have the opportunity to consider. Subject to this Court’s discretion, these issues may include both the codification of SB 290 as NRS Chapter 604D, and the regulatory matters Respondents raise in their response brief for the first time in these proceedings.



Even in appeals involving ballot initiatives, when the “need for an early decision on the merits [is] pressing,” this Court has acknowledged that the parties should be “allowed to present oral argument upon the legal issues, as an aid to the court in deciding the matter.” *Lundberg v. Koontz*, 82 Nev. 360, 363, 418 P.2d 808, 809 (1966).

Respondents’ brief raises a new argument not raised in district court, citing “recent actions by the federal government” and a proposed interpretive rule by the U.S. Consumer Financial Protection Bureau (CFPB) regarding earned wage access services (the “Proposed Rule”). Resp. Ans. Br., at 12 n.4. CFPB published the Proposed Rule on July 31, 2024 and comments were due by August 30, 2024.<sup>3</sup> CFPB has not yet published a final rule, which may depart significantly from the Proposed Rule in response to the comments and feedback of stakeholders, as required by the federal Administrative Procedure Act.<sup>4</sup>

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<sup>3</sup> Truth in Lending (Regulation Z), 89 Fed. Reg. 61358 (proposed July 31, 2024) (accessible via the U.S. CFPB’s Docket No. 2024-0032 at <https://www.regulations.gov/document/CFPB-2024-0032-0001>) (accessed Sep. 27, 2024).

<sup>4</sup> See 5 U.S.C. § 553(c).

The CFPB’s proposed rule explains “CFPB is soliciting comments on the proposal and may make revisions when it issues a final interpretive rule as appropriate in light of feedback received.”<sup>5</sup> Given the timing and preliminary nature of the Proposed Rule, it was neither presented to the district court nor were the parties permitted to address it or brief it below.

To the extent this Court wishes to entertain Respondents’ reference to the Proposed Rule, DailyPay refers to the Nevada Attorney General’s comments submitted in response to it, and urging CFPB “to reconsider” it based on Nevada law governing earned wage services.<sup>6</sup> The Attorney General’s comments note, among other points, that “Nevada...enacted the first statute in the nation to establish that [earned wage access] is not in fact credit so long as it maintains certain characteristics and consumer protections.”<sup>7</sup> The Attorney General further explains that Nevada’s statutory framework “includes no recourse by the provider, no credit reporting, and no ability for the provider to engage in debt collection for

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<sup>5</sup> 89 Fed. Reg. at 61363.

<sup>6</sup> Comment from Office of the Nev. Atty. Gen’l. (Aug. 30, 2024), CFPB Docket No. 2024-0032 (at <https://www.regulations.gov/comment/CFPB-2024-0032-0079>) (accessed Sep. 27, 2024).

<sup>7</sup> *Id.* at 2. The Nevada Legislature adopted these protections with the passage of SB 290, now codified at NRS Chapter 604D.

an unreimbursed [earned wage access] transaction. By law, [earned wage access] providers must also offer at least one means of accessing [earned wage access service] *for free*.”<sup>8</sup>

To the extent this Court considers CFPB’s Proposed Rule, and the Attorney General’s thoughtful rebuttal, these materials further illustrate that the issue of earned wage access services in Nevada constitutes a significant policy matter on which Nevada’s legislature has affirmatively spoken. The Nevada Legislature determined that earned wage access services are not loans, and that earned wage access service providers are not lenders, nor permitted to charge interest, late fees, or otherwise take recourse against earned wage access users.<sup>9</sup> The Legislature codified these provisions under NRS Chapter 604D. Thus, earned wage access services have no place in a Petition ostensibly intended to “limit interest rates on consumer loans.” Resp. Ans. Br. at 20.

Even if earned wage access services were properly included in the Petition under the single-subject rule, the Petition’s description of effect must notify voters that it would significantly alter existing law reflecting

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<sup>8</sup> *Id.* at 2 (emphasis added); citing NRS 604D.410.

<sup>9</sup> NRS 604D.190; NRS 604D.410(1)(c).

the Nevada legislature’s determination on this policy issue. The Petition’s description of effect falls far short of this standard.

The district court nonetheless lacked an opportunity to consider Respondents’ arguments concerning the CFPB’s Proposed Rule. *See, Stanfield v. State*, 99 Nev. 499, 501, 665 P.2d 1146, 1147 (1983) (“The purpose of briefing and oral argument is to inform this Court of all authorities relevant to the issues raised in the appeal”). To the extent Respondents raise the issue now for the first time on appeal, and in response to DailyPay’s opening brief, DailyPay respectfully submits that oral argument is appropriate to allow the parties to present their positions for this Court’s consideration.

**III. The Petition Violates NRS 295.009’s Single-Subject Rule and Respondents’ Arguments to the Contrary do Not Rehabilitate the Petition’s Failure to Satisfy this Standard.**

“[T]o determine the initiative’s purpose or subject, this Court looks to its textual language and the proponents’ arguments.” *Las Vegas Taxpayer Accountability Cmte. v. City Council of City of Las Vegas*, 125 Nev. 165, 180, 208 P.3d 429, 4439 (2009) (citing *Nevadans for Prop. Rights v. Sec’y of State*, 122 Nev. 894, 907, 141 P.3d 1235, 1243 (2006)).

Respondents argue the Petition’s single subject is “limit[ing] interest rates on consumer loan transactions[.]” Resp. Ans. Br., at 18.

They claim “the overarching change proposed in the Petition is singular—limiting interest rates on consumer loans, and all other provisions support that central goal.” Resp. Ans. Br., at 20. And, for good measure, they repeat “[t]he subject here, stated once again, is specifically the limiting of interest rates on consumer loans.” Resp. Ans. Br., at 24.

Although Respondents’ contentions are belied by the Petition’s sweeping application to earned wage access services, which definitionally are not consumer loans, accepting the Respondents’ premise leads to the same conclusion: the Petition violates NRS 295.009’s single-subject rule. The Petition’s prohibitions against earned wage access services are not “functionally related and germane to” the “limiting of interest rates on consumer loans.” NRS 295.009(1)-(2). Earned wage access services are not loans, and earned wage access service providers are not lenders. NRS 604D.190(1)(b) (nothing in this chapter shall be construed to cause...any earned wage access licensee in compliance with NRS Chapter 604D “to be deemed a creditor, lender or money transmitter”). These service providers neither lend money nor charge interest on the amounts transferred to workers through these services. NRS 604D.190(1)(a). They facilitate access to unpaid wages to which a worker is entitled. NRS 604D.050. If

the Petition’s single subject is to “limit interest rates on consumer loans,” then earned wage access services have no place in the Petition under the single-subject rule. At best, the inclusion of earned wage access services in the Petition is superfluous; at worst, it is a cynical attempt to circumvent the single-subject rule. In either case, the inclusion of earned wage access services within the sweep of the Petition’s substance violates NRS 295.009’s requirement that the Petition be limited to a single subject.

Respondents gloss over this fatal shortcoming by arguing it is “irrelevant” that “there are multiple kinds of transactions that fall under the Petition’s proposed 36% interest rate limit.” Resp. Ans. Br., at 22. Respondents contend that since the Petition simply defines the term “loan” to include all manner of transactions involving money, there is no single-subject problem. Respondents’ position seems to be that by defining all manner of financial transactions to be within the Petition’s subject, it axiomatically cannot violate the single-subject rule. Respondents’ logic, effectively arguing that the Petition’s “single” subject is allowed to be as broad as can be conceived, so that nothing can fall outside its bounds, eviscerates the single-subject rule and the protections it affords to the initiative process.

By way of example, Respondents’ reasoning is akin to an initiative that proposes universal restrictions on the use of “vehicles” to promote “vehicle safety” only to define the term “vehicle” to include planes, helicopters, trains, cars, boats, submarines, bikes, and skateboards—all of which may be used for transportation but otherwise have nothing else in common. Such an approach would clearly run afoul of the single-subject rule, yet it is precisely the approach Respondents have taken with the Petition’s definition of “loan.” I AA 121-122.

The expansive breadth of the Petition’s proposal violates the single-subject rule because the Petition penalizes third parties who have no reason to expect that the proposal will affect their interests by the Petition’s vast definition of “lending practices.” Under NRS 295.009(2), an initiative’s provisions must be “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.” The Petition will penalize “any other persons that markets, offers, brokers, arranges, facilitates, makes, or services a loan,” as defined in the Petition. I AA 122. This necessarily includes third-party employers and others with whom employer-integrated earned wage access service providers partner

to provide services under Nevada law. NRS 604D.090. Such entities are not sufficiently notified that they, too, will be adversely affected by a Petition claiming to crack down on “high-interest lending practices,” defying the single-subject rule’s requirements under NRS 295.009(2).

If this Court accepts Respondents’ arguments regarding the Petition’s supposedly singular focus on “limiting interest rates on consumer loans,” subject matter, then this Court must necessarily conclude that earned wage access services have no place in the Petition. Such services are not, and have no relationship to, interest-bearing transactions or any other form of “consumer loans.” Respondents may not bypass the single-subject rule by combining multiple unrelated subjects into a single definition, as doing so with judicial imprimatur would nullify and render meaningless the single-subject rule.

**IV. The Petition’s Description of Effect Insufficiently Describes its Material Changes to Existing Law.**

Respondents argue the Petition’s description of effect is sufficient, contending that it “very simply and directly describes the interest-rate cap, the types of transactions regulated by the cap, and the mechanisms in place to prevent evasion of the cap.” Resp. Ans. Br., at 29. Not so. The description of effect makes no attempt whatsoever to inform voters of the



Petition’s significant and material changes to existing law regulating earned wage access services under NRS Chapter 604D. The Petition’s proposed substantive changes will upend the entire statutory framework implemented by the Nevada legislature after extensive deliberation, and with bipartisan support, with the passage of SB 290 in 2023. Yet, the Petition’s description of effect is completely silent on this significant and material change. I AA 131. The district court therefore erred in concluding the description of effect sufficiently apprises voters of the Petition’s material affects. IV AA 755-756.

NRS 295.009(1)(b) requires the Petition to “[s]et forth, in not more than 200 words, a description of the effect of the initiative...if the initiative...is approved by the voters.” The description-of-effect requirement “is significant as a tool to help prevent voter confusion and promote informed decisions.” *Las Vegas Taxpayer Accountability Cmte. v. City Council of City of Las Vegas*, 125 Nev. 165, 177, 208 P.3d 429, 437 (2009) (citation omitted). A description is sufficient if it states “what the initiative will accomplish and how it will achieve those goals.” *Educ. Initiative PAC*, 129 Nev. at 38, 293 P.3d at 876. This does not mean, and DailyPay does not argue, that the description of effect “must highlight

every nuance and effect of an initiative[.]” *Id.* at 47, 293 P.3d at 882. It does mean, though, that “a description of effect’s failure to address [its] substantial impact[s] is a material omission.” *Education Freedom PAC v. Reid*, 138 Nev. Adv. Op. 47, 512 P.3d 296, 304 (2022). *See also*, *No Solar Tax PAC v. Citizens for Solar and Energy Fairness*, 132 Nev. 1012 (Aug. 4, 2016) (unpublished), at \*2 (description of effect is invalid where it “fails to accurately describe” the measure’s purpose “and the consequences of repealing the referred language”).

The Petition’s description of effect is much like the description this Court invalidated in *Prevent Sanctuary Cities v. Haley*, 134 Nev. 998, 421 P.3d 281 (May 16, 2018) (unpublished). In *Haley*, the Court held that even though the Petition satisfied the single-subject rule, the description of effect was “insufficient” because it failed to meet “the requirement that the description alert voters to the breadth and range of effects that the initiative will have.” *Id.* at \*4. The description in *Haley* was inadequate because “the impact of [its] prohibition on existing policies and laws [was] not described,” and “by failing to include such effects, the description of effect [was] deceptive and misleading.” *Id.* The Court held that the title of the petition “add[ed] to the problem”—because “Nevada allows an

initiative’s proponent to draft both the title and description they will use in the signature-gathering process” both “the title and the description of effect must be sufficient to allow the voter...to understand the initiative being proposed and its effect if adopted.” *Id.*, at \*4-5.

Much like the description in *Haley*, the description here fails to alert voters to “the breadth and range of effects” the Petition will have on existing law and policies. I AA 121. This is particularly true when viewed in light of the title of the Petition’s proposed act—the “Preventing Predatory Payday and Other Loans Act.” I AA 121. The description in this Petition does not explain what it means when it refers to the term “loan,” and “high-interest lending practices,” I AA 131, particularly failing to explain that it sweeps non-loan, non-credit transactions under this broadly redefined term. The Petition’s description does not mention that it will upend an entire statute—NRS Chapter 604D—by imposing new regulations inconsistent with the Nevada Legislature’s carefully crafted statutory framework for these non-loan services.

Additionally, the description does not alert employers who offer earned wage access services to their workers that they will be regarded as providing or facilitating “other loans” under the “Preventing Predatory

Payday and Other Loans Act.” The Petition’s substantive changes are not hypothetical, tangential, ancillary changes to Nevada law. These are substantive, material changes about which voters have a right to be apprised.

The description’s silence as to its material effects is rendered all the more problematic by the Petition’s title, which misleads voters into thinking the Petition deals only with a specific type of transaction, *i.e.*, “Predatory Payday” loans, when the proposal’s scope is actually much broader and affects non-loan services voters may use or offer, facilitate, or market to others.

The district court erred in holding that the Petition’s description of effect sufficiently informs voters concerning the Petition’s material effects on existing law. IV AA 755. Despite using little more than half of the statutorily allowed 200 words, the Petition’s description of effect makes no reference whatsoever to the significant material changes it seeks to Nevada’s statutes governing earned wage access services.

As *Haley* instructs, the Petition proponents should amend the description of effect to sufficiently disclose to voters how the Petition proposes to change existing law governing earned wage access services.

V. **The Petition Must Include the Full Text of NRS Chapter 604D.**

Finally, Respondents incorrectly contend that “[t]here is no requirement to include the text of any other Nevada statute to which a Petition’s provisions may relate[.]” Resp. Ans. Br., at 33. Respondents hope to dismiss the Petition’s failure to satisfy Constitutional and statutory “full-text” rules by asserting that the “full-text” requirement as applied to initiative petitions is “an implausible standard.” Resp. Ans. Br., at 33.

On this point, Respondents’ position is undermined by their own recognition that “because the people’s initiative power is legislative in nature, that power is subject to the same prerogatives and limitations placed upon the Legislature.” Resp. Ans. Br., at 10-11 (citing *Educ. Freedom PAC v. Reid*, 138 Nev. Adv. Op. 47, 512 P.3d 296, 306 (2022)). DailyPay agrees with Respondents: the same rules and limitations that apply to the Legislature’s power to amend existing law apply with equal force to the ballot initiative process whereby the people may directly “enact, amend, and repeal laws.” *Educ. Freedom PAC*, 512 P.3d at 306.

Because the same rules that apply to lawmaking by the Legislature apply to lawmaking at the ballot box, the Nevada Constitution’s single-

subject rule, imposed on the Legislature under Article 4, providing that “no law shall be revised or amended by reference to its title only; but in such case,” of revision or amendment, “the act as revised or section as amended, shall be re-enacted and published at length,” equally applies to legislation proposed by ballot initiative. This is precisely why the Nevada Constitution imposes a corollary requirement on ballot measures to “include the full text of the measure proposed.” Nev. Const. Art. 19, § 3. This Constitutional imperative serves as the basis for NRS 295.015’s requirement that an initiative petition’s proponent must certify “that each signer had an opportunity before signing to read the full text of the act or resolution” proposed. NRS 295.0575(6).

Respondents’ position is further undermined by the Petition’s text itself. I AA 120-130. Of the Petition’s 10 pages of proposed text, more than 4 pages consist entirely of NRS 99.050’s current and nearly unaltered language, except for the Petition’s proposed addition referencing NRS Chapter 604D. I AA 126-130. Presumably, the rest of NRS 99.050 is presented without alteration because Respondents acknowledge that voters are entitled to review in context the proposed amendment to incorporate NRS Chapter 604D into existing statute, NRS 99.050, and to

consider how the statute will operate if its proposed amendments are adopted. The same reasoning applies to the Petition’s proposed changes to existing statute—NRS Chapter 604D.

The Petition proposes to replace NRS Chapter 604D with a “new” Chapter 604D. I AA 121. Whether or not NRS Chapter 604D had been codified when the Petition was filed, the fact remains that NRS 604D.010-604D.900 exists now. The Petition’s text states it will replace it with a “new” chapter. *Id.* Voters are privy only to what the Petition presents for their review, particularly at the signature-gathering stage. Accordingly, the Petition must either adequately explain its references to NRS Chapter 604D in the description of effect, or include the “full text” of the statute it seeks to replace. Presently, it does neither, and undermining the premise behind procedural rules meant to “prevent voter confusion and promote informed decisions.” *Nevadans for Nevada v. Beers*, 122 Nev. 930, 940, 142 P.3d 339, 345 (2006) (citations omitted).

Although Respondents seek unavailingly to diminish its application, this Court’s recent decision in *Schools Over Stadiums v. Thompson* is directly applicable here. Resp. Ans. Br. at 34 n. 9 (citing *Schools Over Stadiums v. Thompson*, 548 P.3d 775 (Nev. 2024) (unpublished). There,

this Court invalidated a petition on “full-text” grounds, emphasizing that “[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.” *Schools Over Stadiums v. Thompson*, at \*1 (quoting *Las Vegas Conv. & Visitors Auth. v. Miller*, 124 Nev. 669, 686, 191 P.3d 1138, 1149 (2008)). In *Schools Over Stadiums*, this Court struck down a petition for failing to include the entirety of the legislation on which it sought a referendum, holding that “SB 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 measure. *Id.* (emphases added). Here, too, voters deserve the complete context of the Petition’s proposed changes to existing law under NRS Chapter 604D.

Respondents argue the *Schools Over Stadiums* decision has no bearing here, because the measure at issue in that case was a referendum rather than a statutory initiative petition. Resp. Ans. Br., at 34 n.9. The Constitution’s full-text rule, however, makes no such distinction. It applies equally to referendum and initiative petitions alike. Nev. Const. Art. 19, § 3 (“Each referendum petition and initiative petition shall



include the full text of the measure proposed”) (emphases added). Similarly, NRS 295.0575’s requirement also applies to both referenda and statutory initiative petitions. NRS 295.0575(6). Whether on constitutional or statutory grounds, Respondents’ position fails.

The Petition seeks voter approval to substantially change existing law, which the Legislature enacted as SB 290 and codified in statute at NRS Chapter 604D. The voters are entitled to review, in its entirety, the existing law which the Petition expressly targets and seeks to change. I AA 126. The Petition must include the full text of the statute it purports to replace, so that a potential signatory has a meaningful chance to review and consider the measure’s proposed changes in context.

### CONCLUSION

Nevadans’ right to participate in direct democracy, and to enact laws at the ballot box, depends on procedural rules that promote fairness, transparency, and informed decision-making. This Court’s affirmance of the district court’s ruling risks eroding the procedural rules and protections which exist to ensure the public is not misinformed—or worse, outright deceived—by the ballot initiative process.

The district court erred in concluding that the Petition satisfies NRS 295.009's single-subject rule. The Petition's description of effect is wholly inadequate and fails to inform Nevada voters of the significant and material changes to existing law that it seeks. This description of effect can, and should, be revised and re-filed to discuss and explain the Petition's material and substantive effects on existing law. Further, the Petition should be required to include the "full text" of the measure proposed so that voters have an opportunity consider what the law is now, and what the law will be if the Petition is approved.

This Court should reverse the district court's order and prevent the Petition, as drafted, from advancing for signatures.

DATED this 1st day of October, 2024.



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## ATTORNEY'S CERTIFICATE OF COMPLIANCE

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

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains **4,812 words** (no more than half the type-volume specified for an opening or answering brief).

3. Finally, 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 NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, 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 1st day of October, 2024.



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**CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(1)(b) and 25(1)(d), I, the undersigned, hereby certify that I electronically filed the foregoing **APPELLANT DAILYPAY'S REPLY BRIEF** with the Clerk of Court for the Supreme Court of Nevada by using the Supreme Court of Nevada's E-filing system on this 1st day of October, 2024.

I further certify that all participants in this case are registered with the Supreme Court of Nevada's E-filing system, and that service has been accomplished to the following individuals through the Court's E-filing System or by first class United States mail, postage prepaid, at Las Vegas, Nevada as follows:



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an employee of Holland & Hart, LLP