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, Respondent.	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

APPELLANTS ACTIVEHOURS, INC.'S AND STACY PRESS' REPLY BRIEF

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NRAP 26.1 DISCLOSURE

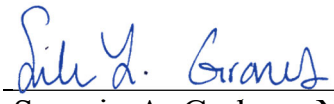
The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) that must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. Appellant Activehours, Inc., a Delaware corporation, has no parent corporation and no publicly-held company owns 10% or more of its stock.

2. The law firm Kaempfer Crowell has represented Appellants Activehours, Inc. and Stacy Press throughout this case—both in the District Court and in this Court.

DATED October 1, 2024.

KAEMPFER CROWELL



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I. INTRODUCTION

Respondents Omnibus Answering Brief does little to dispute the challenges presented in Activehours Opening Brief. The arguments it does make are unavailing. Respondents argue that the people have the same power to make laws as the Legislature, but that does not mean that Respondents can ignore the statutory restrictions placed upon the initiative power precisely to ensure Nevadans are afforded the opportunity to make informed decisions. Respondents' Initiative must comply with Nevada's single subject requirement and must contain a description of effect that will provide voters a meaningful understanding of what the Initiative is trying to accomplish. The Initiative here meets neither of these requirements.

The Initiative Respondents so fervently champion is not as "straightforward" as they claim. Answering Brief at p. 2. The district court recognized this, acknowledging that this "is close to the broadest initiative that I've had to deal with." JA IV A00720, 113:5–6. That is the primary deficiency with Respondents' Initiative—it is too broad. Its breadth results in its inability to comply with the single subject requirement. While Respondents claim the Initiative's purpose is to limit interest rates on consumer loan transactions, the Initiative implicates any transaction wherein money or credit are provided to consumers under *any* terms. The Initiative does not limit its reach to only loans. It does not even limit its reach to transactions that carry interest rates or fees. This disparity between the Initiative's parts and its claimed purpose is a violation of the single subject requirement.

The only way Respondents could conceivably connect all transactions wherein consumers are provided money or credit under any terms would require placing the Initiative's terms under an excessively broad umbrella such as "consumer transactions" generally. But Nevada law does not permit such an excessively general subject. Respondents instead narrow their purported subject, but do not conform their Initiative to fit within the confines of that purported subject. That is a violation of the single subject requirement and invalidates the Initiative.

The Initiative's description of effect is equally flawed, and for the same reasons. The volume of transactions implicated in the Initiative makes the articulation of a sufficient description of effect a challenging prospect. Nevertheless, Respondents must inform voters of the consequences of the Initiative. Instead, Respondents tell voters, through their description of effect, that the Initiative will combat high-interest lending practices by capping interest rates. This consequently leads voters to believe the transactions being regulated are loan transactions, or at a minimum, transactions that carry high interest rates. Voters would be wrong on both counts. Instead, the Initiative would apply to transactions such as earned wage access services—transactions that voters know to be non-loan and non-interest bearing transactions. Failing to inform voters of the actual reach and implication of the Initiative renders the description of effect deficient.

For these reasons, as more fully set forth below and in Activehours Opening Brief, the Court should reverse the district court's order and instruct the district court to enjoin S-03-2024 from moving forward.

II. ARGUMENT

A. Although Legislative in Nature, The Initiative Power Must Nevertheless Comply With Statutory Restrictions.

In their Omnibus Answering Brief, Respondents laud the people's right to the initiative process in Nevada. However, statutory requirements such as the single subject rule are an integral part of that process. The single subject rule is intended to promote "informed decisions and in preventing the enactment of unpopular provisions by attaching them to more attractive proposals or concealing them in lengthy, complex initiatives." *Las Vegas Taxpayer Accountability Comm. v. City Council of City of Las Vegas*, 125 Nev. 165, 176, 208 P.3d 429, 436–37 (2009) (citing *Nevadans for Prop. Rights v. Sec'y of State*, 122 Nev. 894, 905, 141 P.3d 1235, 1242 (2006)).

The restrictions placed on a description of effect similarly afford necessary protections to Nevada's voters. *See Las Vegas Taxpayer Accountability Comm.* at 177, 208 P.3d at 437 ("the requirement that each measure include a description of effect facilitates the constitutional right to meaningfully engage in the initiative process by helping to prevent voter confusion and promote informed decisions.") (internal citations and quotations omitted). These necessary requirements do not detract from the initiative power, but rather ensure its integrity.

And while Activehours does not dispute Respondents' assertions that "[t]he people's initiative power 'is legislative in nature,'" it must nevertheless abide by the statutory restrictions placed upon initiative petitions. Respondents' Omnibus Answering Brief ("Answering Brief") at p. 10. The Initiative Petition here violates those restrictions, notwithstanding Respondents' attempts to cast its Initiative in the

same light as the Nevada Legislature's enactment of statutes that define transactions as "loans" or "non-loans." This false equivalence ignores that SB 290, now codified at NRS Chapter 604D, dealt with a single transaction. Chapters 604A, 604B, 604C, 675, 688A, etc. show a similar restraint that is absent from the Initiative Petition whose grasp would extend to all of these chapters. JA II A00219–A00220 at Sec. 8. The Initiative Petition would not stop at those chapters because it proposes to encompass any transaction where "[m]oney or credit [are] provided to a consumer in exchange for the consumer's agreement to a certain set of terms." JA II A00217–A00218 at Sec. 5. And the terms do not even have to include interest. *Id*. In other words, any time money or credit exchanges hands under *any* terms, interest or not, the Initiative Petition would cast its net over that transaction and call it a loan. That is not what the Legislature has done with SB290, and Respondents should not be permitted to advance such a broad initiative here. Instead, if they want to change the character of an innumerable number of transactions, they should do what the Legislature has done and advance separate initiatives for those transactions.

The question could be asked why it matters, if a transaction does not carry interest, then it would not be affected by the statutory framework the Initiative proposes. But at the outset, the Initiative's proposed language informs Nevadans that it is the "Preventing Payday and Other Loans Act" and that it will combat "predatory payday lending and other high-cost loans." JA II A00217 at Sec. 2. So it lumps *any* transaction involving money or credit under *any* terms into the category of "predatory payday lending." That is not a label that should be slapped on any

transaction so flippantly. Particularly when it would also apply to transactions that charge neither an interest nor a fee[1].

B. The Initiative Violates the Single Subject Requirement.

The Initiative's breadth ensures that it encompasses more than one subject, in violation of the single subject requirement. The Initiative's own language would suggest that its single subject or purpose is to prevent or address "predatory payday lending and other high-cost loans." *Id*. That is, after all, what the Initiative's proposed language proclaims its objective to be. *Id*. Its description of effect supports this written purpose as it lauds that the Initiative "addresses high-interest lending practices." JA II A00227. Of course, the *true* purpose of the Initiative has been ever evolving to meet arguments posed by Appellants. In response to briefing challenging the validity of the Initiative, Respondents came back with a shiny new stated purpose of "an overall program of consumer debt relief." JA III A000517. Then, at oral argument, presumably in response to Appellants' challenges, Respondents came up with yet *another* purpose—limiting interest rates on consumer loans[2]. The district court, perhaps to make the subject fit more neatly with the non-loan products, enhanced the subject to "limit[ing] interest rates on consumer loan *transactions*." JA IV A00754. This evolution of what the Initiative's purpose

[1] Activehours, for its part, is statutorily required to provide users with a free mechanism to use its services. NRS 604D.200(2)(d); *see also* JA II A00239 at Sec. 12.

[2] Activehours acknowledges that Respondents argued this purpose at oral argument and that the district court did not "invent" the purpose, but instead altered it from what was presented by Respondents.

actually is negates Respondents claims that their Initiative is a "fairly straightforward" measure. Answering Brief at p. 2. Rather, it illustrates that even they had difficulty finding a subject broad enough to encompass all conceivable consumer transactions under the guise of regulating predatory loans. That is, of course, a consequence of an overbroad initiative whose parts are not functionally related to its purported subject.

1. The Initiative's Parts are Not Functionally Related to Its Purported Subject.

Respondents' attempts to liken their position to *Helton* and *Nevadans for Reprod. Freedom* is unavailing. In *Helton*, the initiative at least fit within the purview of its stated purpose—"the framework by which specified officeholders are presented to voters and elected." *Helton*, 512 P.3d at 314. It did so because it sought to enact new rules to govern primary elections and ranked-choice rules to govern general elections. In other words, the initiative, at a minimum, stuck to regulating elections. *Id*. at 313. Similarly, *Nevadans for Reprod. Freedom* focused on protecting reproductive rights. 140 Nev. Adv. Op. 28, 546 P.3d at 808. Though the initiative included several NRS chapters as the Initiative does here, in *Nevadans for Reprod. Freedom*, the initiative included only chapters which have an impact on reproduction such as prenatal care, birth control, and fertility care, to name a few. *Id*. at 804[3].

[3] Activehours further differentiates the Initiative here from *Helton* and *Nevadans for Reprod. Freedom* in its Opening Brief. *See* Activehours Opening Brief at pp. 14–16. Respondents did not specifically address those arguments, and Activehours will not reargue them here.

This is vastly different from what Respondents attempt to do. Respondents repeatedly emphasize the Initiative is intended to target interest rates on consumer loans. *See e.g.* Answering Brief at p. 23. That is, after all, its argued purpose. Yet, Respondents never address why their Initiative would apply to non-interest bearing transactions. The Initiative takes no care to limit its reach to consumer loan transactions that actually bear interest or to consumer transactions that are loans *at all*. Rather, as stated above, the Initiative would apply to any situation in which money or credit is being provided to a consumer under *any* terms—whether there is interest or a fee involved is of no consequence. As Respondents acknowledge, the Court in *Nevadans for Reprod. Freedom* and *Helton* stated, "an initiative petition can propose more than once change and still comply with the single-subject requirement *as long as the changes are functionally related to each other and the overall subject of the initiative*." 40 Nev. Adv. Op. 28, 546 P.3d at 807 (citing *Helton*, 512 P.3d at 315). The Initiative here would encompass transactions that do not bear interest. Such transactions are not functionally related to a subject of limiting interest rates. It would be absurd to suggest that an initiative that seeks to cap interest rates on consumer loans could prevail with an initiative that would encompass non-interest bearing transactions *and* transactions that are not loans. The law does not permit that outcome.

2. The Initiative's Subject is Overbroad.

There is an interesting juxtaposition that is created with the Initiative's stated purpose in combination with the breadth of its text. If, as Respondents urge, the transactions that make up the Initiative—loan and non-loan transactions and

transactions that both bear and do not bear interest—are in act functionally related to the subject of limiting interest rates on consumer loan transactions, then the result is that the subject is too broad. This is unlike *Helton*, which Respondents rely on for the notion that their stated purpose is not overly broad. In *Helton*, the purpose, though stated broadly, applied to a narrow measure that affected only the "framework" of elections. 512 P.3d at 314. The opposite is true here.

Respondents have taken great care to evolve their stated purpose into a more targeted statement, purporting to limit interest rates on consumer loans, arguably a narrow cause. But the issue is in its application. The initiative itself is not limited to interest-bearing loans like the initiative in *Helton* was limited to the framework of elections or like the initiative in *Nevadans for Reprod. Freedom* was limited to reproductive freedom. Instead, the subject here really is consumer transactions, not just loans or interest bearing transactions—that is the only way to fit the Initiative's disparate parts under one umbrella. And that subject is one of excessive generality.

A subject of "consumer transactions" is excessively general for the same reason the stated purpose of regulating "the practices of the insurance industry" is excessively general, as outlined by the Court in *California Trial Lawyers Assn. v. Eu*, 245 Cal. Rptr. 916, 921 (Ct. App. 1988), *abrogated on other grounds by Lewis v. Superior Court*, 19 Cal. 4th 1232 (1999). Such a stated purpose would allow the grouping of an endless amount of unrelated provisions under an all-encompassing umbrella. *Id*. That the Initiative does not regulate the loan industry as a whole, as Respondents argue, is irrelevant. The test comes down to what subject captures the

various parts of the Initiative. Here, because the initiative is so broad, the only fitting subject that can adequately accommodate all its parts is a subject of consumer transactions generally.

Respondents aptly state that "[t]o 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 to high and wide in their ambitions." Answering Brief at p. 25. That is precisely what has occurred. Respondents have put, into their initiative, an array of consumer transactions that are not related to each other, and certainly not related to an aim of limiting interest rates. Their only connection is that they are all consumer transactions, a connection of excessive generality. Despite this, Respondents are trying to pass their stated purpose as limiting interest rates on consumer loan transactions. But that shoe does not fit this Initiative.

C. The Initiative is Clearly Invalid Because its Description of Effect is Misleading in Violation of NRS 295.009.

The Initiative's description of effect does not adequately inform voters of the impact of the proposed amendment to Nevada law. A description of effect must sufficiently explain the ramifications of the proposed amendment to allow voters to make an informed decision. *Nev. Judges Ass'n v. Lau*, 112 Nev. 51, 59, 910 P.2d 898, 903 (1996). Here, the description of effect simply does not do that.

Respondents argue that the description of effect describes the transactions that are implicated by their proposed interest rate cap. Answering Brief at p. 29. But nowhere does the description of effect inform voters that non-loan,

non-interest bearing consumer transactions are part of those transactions it considers "high-interest lending." JA II A00227. Current law defines transactions such as earned wage access services as non-loan transactions; nevertheless, they are a part of the Initiative. As Respondents argue, "everyone is presumed to know the law, and this presumption is not even rebuttable." Answering Brief at p. 30 (quoting *Smith v. State*, 38 Nev. 477, 481, 151 P. 512, 512 (1915)). That being the case, Nevadans would have no reason to suspect, under the Initiative's description of effect, that the Initiative applies to earned wage access services—a non-loan, non-interest bearing transaction. Or that the Initiative would apply to *any* transaction where money or credit are provided to a consumer under any set of terms. To the contrary, Nevadans would rightly assume that earned wage access services are not implicated by the Initiative because they are not a loan and they do not carry interest. The description of effect is woefully deficient in informing voters of its broad application.

These deficiencies cannot legitimately be categorized as the types of "details" that are unnecessary to ensure voters understand the impact of the Initiative generally. To truly understand the Initiative, voters must be informed that while it talks a lot about loans and interest rates, it applies anytime money or credit are provided under any terms. That is not a mere detail, but a significant consequence of the Initiative. These omissions render the description of effect deficient.

III. CONCLUSION

Based upon the foregoing, the Court should reverse the district court's order denying Appellants' challenge to initiative petition S-03-2024 and determine

that the Initiative violates NRS 295.009's single subject requirement and that its description of effect is legally deficient, precluding its placement on the ballot.

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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 2016 in 14-point, Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 40, 40A, or 40B because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, and contains 2,730 words.

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.

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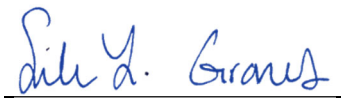

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of October, 2024, a true and correct copy of **APPELLANTS ACTIVEHOURS, INC.'S AND STACY PRESS' REPLY BRIEF** was served upon all counsel of record by electronically filing the document using the Supreme Court of Nevada's electronic filing system.

By: _____
An employee of Kaempfer Crowell