

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; and STACY Press, an individual.

Appellants,

vs.

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

Respondents.

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Case No.: 88557

Dist. Ct. 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

**APPELLANT DAILYPAY, INC.'S REPLY IN SUPPORT
OF NOTICE OF MOOTNESS**

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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.

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

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

DATED this 6th day of December 2024.

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I. INTRODUCTION & ARGUMENT

Respondent Ms. Feldman’s failure to submit signatures by NRS 295.056’s mandatory deadline renders this appeal moot. Any opinion or order this Court may issue on the legal sufficiency of Petition S-3-2024 would be purely advisory and improper. DailyPay, Inc. urges this Court to dispense with this appeal based on Respondents’ failure to comply with NRS 295.056.

“The question of mootness is one of justiciability. This court’s duty is not to render advisory opinions but, rather, to resolve actual controversies by an enforceable judgment.” *Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (citations omitted). In *Personhood*, this Court held that “the appeal was rendered moot when appellants failed to submit sufficient signatures on the initiative petition by the...submission deadline, rendering the proposed initiative ineligible for...the 2010 general election regardless of [the Court’s] decision.” *Id.*, at 602, 245 P.3d at 574.

Respondents Ms. Feldman and Stop Predatory Lending NV acknowledge their failure, if not their refusal, to timely submit signatures required to advance the Petition by the applicable deadline.¹ Respondents

¹ Respondent Secretary of State’s Office has publicly announced that S-03-2024 “failed to submit signatures by November 20, 2024 deadline.” *See*, “2024 Petitions & General Election Ballot

acknowledge “it is undisputed that Respondents did not submit 102,000-plus valid signatures required by the November 20, 2024, constitutional deadline.”² Respondents’ Resp., at 6. Accordingly, there is no question that this appeal is moot and a decision on the legal sufficiency of the Petition is neither warranted nor appropriate.

Respondents ask this Court to overlook their deliberate failure to gather signatures, despite facing no actual impediment preventing them from doing so, because they intend to file an “identical” Petition in 2026. Respondents’ Resp., at 7. This Court squarely rejected this exact argument in *Personhood*, reasoning that “addressing a potential future initiative at this point would be speculative and lead to an improper advisory opinion.” 126 Nev. at 603, 245 P.3d at 575 (citations omitted). Here, the same rationale controls.

Moreover, Respondents’ contention that they will file an “identical” petition is, at best, mere conjecture. The Nevada Legislature will convene in less than two months for the 83rd Regular Session. During each of the last ten regular legislative sessions dating back to 2003, the Legislature

Questions, Nev. Secretary of State’s Office (at <https://www.nvsos.gov/sos/elections/2024-petitions>) (accessed Dec. 5, 2024).

has enacted substantial changes to Nevada’s ballot measure statutes under NRS Chapter 295.³ Ms. Feldman cannot accurately pledge, as she does in her declaration under penalty of perjury, that she will “submit the exact measure at the very next opportunity,” because Ms. Feldman has no way of knowing what changes the Legislature may make to NRS Chapter 295’s statutory framework for ballot measures during the upcoming legislative session.

Similarly, Ms. Feldman cannot presently know what the requirements will be to even file an initiative petition in 2026, in light of the upcoming legislative session and the likely prospect of amendments to NRS Chapter 295’s statutes governing filing and circulating initiative petitions. The Legislature has adopted such amendments to NRS Chapter 295 every regular legislative session for the past twenty years.

Respondents claim they “did everything that could possibly be asked of them to shepherd their initiative through the process.” Respondents’

³ See, Assembly Bill 52 (Nev., 2023), Sec. 12 (amending NRS 295.217); Assembly Bill 321 (Nev., 2021), Sec. 84.5 (amending NRS 295.026); SB 123 (Nev., 2019), Sec. 57 (amending NRS 295.015); AB 45 (Nev., 2017), Secs. 30-31 (amending NRS 295.015); Assembly Bill 462 (Nev., 2015), Sec. 67 (amending NRS 295.045 and NRS 295.160); Senate Bill 325 (Nev., 2013), Sec. 4 (amending NRS 295.121); Assembly Bill 545 (Nev., 2011), Sec. 155 (amending NRS 295.121); Senate Bill 212 (Nev., 2009), Secs. 11-13 (amending NRS 295.012 and NRS 295.055); Assembly Bill 517 (Nev., 2007), Sec. 55 (amending NRS 295.056); Senate Bill 224 (Nev., 2005), Secs. 25-30 (amending NRS 295.06, NRS 295.085, NRS 295.105 and NRS 295.115); and Assembly Bill 125 (Nev., 2003), Sec. 33 (amending NRS 295.121).

Resp., at 4. To the contrary, Respondents made a deliberate, knowing, and calculated decision *not* to do the *one* thing required of them to advance their proposal—gather and submit signatures by November 20, 2024. Respondents’ failure is particularly inexcusable in light of this Court’s instruction in July of this year that “nothing appears to prevent Feldman from collecting signatures while this appeal proceeds.” Ord. Regarding Motions, Docket No. 88557, Document 24-24187 (July 11, 2024). This Court notified Respondents months ago that nothing stood in their way of gathering signatures. Respondents chose not to do so.

“This court is confined to controversies in the true sense...[it] do[es] not have constitutional permission to render advisory opinions.” *City of N. Las Vegas v. Cluff*, 85 Nev. 200, 201, 452 P.2d 461, 462 (1969) (addressing whether or not the validity of a proposed ballot measure “that ha[d] not yet been submitted to the voters...can be ruled upon in advance of its enactment,” and concluding “**the answer is that it cannot.**”) (Emphasis added). In urging this Court to render a purely advisory opinion on the legal sufficiency of Petition S-3-2024, which cannot advance regardless of this Court’s decision, Respondents ask this Court to ignore the Nevada Constitution, render NRS 295.056’s deadline a nullity, and set aside well-

established precedent that the failure to timely submit signatures renders a petition challenge moot. *Personhood Nev. v. Bristol*, 126 Nev. 599, 245 P.3d 572 (2010); *Harmon v. Cegavske*, 528 P.3d 280, Docket No. 85037 (Nev. 2022) (unpublished) (“As it appears that insufficient signatures were gathered and the initiative petition at issue therefore will not proceed in the initiative process, we conclude that this appeal is moot”). Respondents advance no valid reason for this Court to ignore statute, and its own precedent, in rendering an advisory opinion in this matter.

II. CONCLUSION

This Court should dismiss this appeal as moot based on the Respondent petition proponents’ admitted and undisputed failure to meet NRS 295.056(2)’s deadline to timely submit signatures supporting their Petition.

DATED this 6th day of December 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 **REPLY IN SUPPORT OF NOTICE OF MOOTNESS** with the Clerk of Court for the Supreme Court of Nevada by using the Supreme Court of Nevada’s E-filing system on the 6th day of December 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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