

REC'D & FILED

April 15, 2024
Date

WILLIAM SCOTT HOEN
CLERK

IN THE FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR CARSON CITY
By [Signature] Deputy

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4 NEVADANS FOR FINANCIAL CHOICE, a
5 Nevada Political Action Committee, and
6 CHRISTINA BAUER, an individual,

Plaintiffs,

7 vs.

8 KATE FELDMAN, an individual, STOP
9 PREDATORY LENDING NV, a Nevada
10 Nonprofit Corp., and FRANCISCO V.
11 AGUILAR, in his official capacity as Nevada
12 Secretary of State,

Defendants.

12 DAILYPAY, INC., a Delaware Corporation,

Plaintiff,

14 vs.

15 FRANCISCO V. AGUILAR, in his official
16 capacity as NEVADA SECRETARY OF
17 STATE,

Defendant,

18 and

19 STOP PREDATORY LENDING NV, a
20 Nevada Nonprofit Corp., and KATE
21 FELDMAN, an individual,

Intervenor-Defendants.

Lead Case No. 24-OC-00021B

Dept. No. II

Consolidated with

Case No.: 24 OC 00021 1B
Dept. No.: II

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1 PREFERRED CAPITAL FUNDING
2 NEVADA, LLC, a Nevada limited liability
3 company, and ALLIANCE FOR
4 RESPONSIBLE CONSUMER LEGAL
5 FUNDING, an Illinois nonprofit corporation,

6 Plaintiffs,

7 vs.

8 FRANCISCO V. AGUILAR, in his official
9 capacity as NEVADA SECRETARY OF
10 STATE, and KATE FELDMAN, an
11 individual,

12 Defendants,

13 and

14 STOP PREDATORY LENDING NV, a
15 Nevada Nonprofit Corp.,

16 Intervenor-Defendant.

17 ACTIVEHOURS, INC., a Delaware
18 corporation; STACY PRESS, an
19 individual,

20 Plaintiffs,

21 vs.

22 KATE FELDMAN, an individual; STOP
23 PREDATORY LENDING NV, a Nevada
24 Nonprofit Corp.; and FRANCISCO V.
25 AGUILAR, in his official capacity as
26 NEVADA SECRETARY OF STATE,

27 Defendants.

Case No.: 24 OC 00029 IB
Dept. No.: I

2024 APR 18

WILLIAM

BY

RECORDED & FILED
FILED IN ERROR

Case No.: 24 OC 00029 IB
Dept. No.: I

~~PROPOSED~~ FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER
GRANTING PLAINTIFFS' LEGAL
CHALLENGES TO INITIATIVE
PETITION S-01-2024

28 This matter came before this Court following four complaints, filed by four different sets
of plaintiffs, challenging the legal sufficiency and procedural defects of Initiative Petition S-01-
2024 (the "Petition"), under NRS 295.061. Intervenor-Defendant Kate Feldman ("Ms. Feldman")
filed the Petition on January 5, 2024, with Defendant Nevada Secretary of State (the "Secretary").
On March 22, 2024, the Court held a hearing on the several challenges to the Petition. The Court,
having reviewed the papers and pleadings on file, having considered the oral arguments presented
by the parties, and being fully advised and good cause appearing, finds, concludes, and orders as
follows:

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1 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

2 **A. FINDINGS OF FACT**

3 **1. Initiative Petition S-01-2024**

4 Ms. Feldman filed the Petition with the Secretary on January 5, 2024. The Petition proposes
5 to amend the Nevada Revised Statutes to include a new chapter 604D entitled the "Preventing
6 Predatory Payday and Other Loans Act." Ms. Feldman later filed a second Initiative Petition, S-03-
7 2024, on January 24, 2024, which proposes to enact the same "Preventing Predatory Payday and
8 Other Loans Act," but omits provisions included in the first Petition, S-01-2024. This Order
9 addresses only the first Petition.

10 The first Petition's Description of Effect, which is required under NRS 295.009(1)(b),
11 states as follows:

12 This measure addresses high-interest lending practices by establishing
13 maximum interest rates charged to consumers, and shields more of people's
14 savings and earnings from garnishment than under current law.

15 Currently, most consumer loans have no interest rate cap. The proposed
16 cap would set a maximum interest rate of 36% annually on the unpaid balance
17 of the amount financed, and would apply to consumer loans; deferred-deposit
18 transactions ("payday loans"); title loans; and other loan types dependent on
19 future earnings and income.

20 The initiative also prohibits evading the interest rate cap by structuring
21 transactions to mask their nature as loans covered by this measure, or partnering
22 with out-of-state lenders to violate the rate cap. The initiative voids transactions
23 that violate the cap, and establishes civil penalties.

24 Additionally, the initiative automatically protects \$5,000 of savings in a
25 personal bank account (up from \$400 now), and \$850 of wages in any workweek
26 (up from \$369), as well as a portion of disposable earnings above that amount,
27 from seizure for a debt. Those amounts would be indexed to increase
28 periodically with inflation.

The Petition consists of 18 Sections and nearly 18 pages of new text to be added to the
Nevada Revised Statutes, as well as proposed deletions of, and amendments to, existing statutes.
The existing statutes that the Petition proposes to amend or delete relate to numerous other
statutory chapters that address topics including deferred deposit loans, high-interest loans, retail
installment transactions, banking, writs of execution, garnishment, property exempt from

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1 judgment collection, and other matters. Generally, the Petition's "loan"-related provisions and
2 related penalties against "payday lender[s] or other person[s]" are proposed in Sections 1 through
3 16. The wage garnishment provisions of the proposed "Preventing Predatory Payday and Other
4 Loans Act" are set forth in Sections 17 through 18.

5 The Petition's proposed Act, at Section 5(1)-(2), defines the term "Loan" to include a
6 variety of financial transactions involving money or credit provided to a consumer, as follows:

7 **Loan defined.**

8 ***1. For purposes of this chapter, "loan" means and includes:***

9
10 ***(a) Money or credit provided to a consumer in exchange for the***
11 ***consumer's agreement to a certain set of terms, including, but not limited***
12 ***to, provisions for direct or indirect repayment, interest, fees, charges or***
13 ***other payments, or other conditions;***

14 ***(b) Any deferred deposit transaction or payday loan, installment***
15 ***loan, line of credit, retail installment sales contract, and motor vehicle***
16 ***retail installment sales contract, and other closed-end or open-end credit;***
17 ***and***

18 ***(c) Any sale, assignment, order, or agreement for the payment of***
19 ***unpaid wages, salary, commissions, compensation, or other income, or***
20 ***any portion or amount thereof, whether earned, to be earned, or***
21 ***contingent upon future earnings, that is made in consideration for goods***
22 ***or services, credit, or the payment of money to or for the account of the***
23 ***person earning or receiving, or potentially earning or receiving, the***
24 ***wages, salary, commissions, compensation, or other income.***

25 ***2. Any transaction that satisfies any definition in this section is a "loan"***
26 ***for purposes of this chapter without regard to the means of collection, without***
27 ***regard to whether the payday lender or other lender has legal recourse against***
28 ***the borrower in the event of non-repayment, and without regard to whether the***
transaction carries required charges or payments.

The Petition, at Section 9, proposes a "maximum interest rate" of 36% per year to apply to
"any loan or other transaction subject to" the proposed Act. In Sections 10 through 13, the Petition
proposes various penalties for exceeding the proposed maximum rate or otherwise violating the
provisions of the proposed Act. The Petition, at Section 14, also would constitute a declaration for
the State of Nevada to "opt out" of the federal "Depository Institutions Deregulation and Monetary
Control Act of 1980," Pub. L. 96-221, or "DIDMCA." The Petition further proposes, at Section

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1 15, a prospective application of Section 9's maximum interest rate, purporting to apply the
2 maximum rate to "entities licensed...to provide earned wage access services," as defined in Senate
3 Bill 290 (Nev. Leg. 2023), beginning on January 1, 2030.

4 In addition to its various "payday loan"-related provisions and civil penalties, the Petition's
5 Section 17 proposes to eliminate NRS 21.105(1)(a)-(n), which exempts certain sources of income
6 of a judgment debtor from garnishment, up to \$2,000. This Section of the Petition also eliminates
7 existing statutory categories of sources of income that NRS 21.105(1)(a)-(n) protects from
8 garnishment, and instead proposes a single, greater amount of \$5,000 that is not subject to
9 execution. The Petition also revises and restricts existing provisions under NRS 21.105(6) that
10 afford immunity for financial institutions that make a commercially reasonable effort to determine
11 whether money in a judgment debtor's account is exempt from execution.

12 Finally, Section 18 of the Petition proposes to amend NRS 21.090(1)(g), which exempts
13 from execution certain amounts of a judgment debtor's disposable earnings for any workweek, on
14 a sliding scale depending on the amount the judgment debtor earns during that period. The Petition
15 eliminates NRS 21.090(1)(g)'s existing protections and replaces them with higher thresholds, such
16 that more of a judgment debtor's disposable earnings would be exempt from garnishment. The
17 Petition also redefines NRS 21.090(1)(g)(2)'s definition of "earnings" to specify that
18 "[c]ompensation paid or payable for personal services is earnings regardless of whether the
19 judgment debtor is classified as an independent contractor or an employee." Finally, the Petition
20 proposes to adjust its revised exemption amounts for inflation pursuant to the Consumer Price
21 Index, and directs the Nevada Department of Business and Industry to publish the annual
22 adjustment each year, "round[ing] up" each annual adjustment "to the next \$10."

23 2. Procedural History

24 On January 26, 2024, Plaintiffs Nevadans For Financial Choice and Christina Bauer
25 (collectively, "Nevadans for Financial Choice" or "NFFC") filed a Complaint for Declaratory and
26 Injunctive Relief challenging the legal sufficiency of Initiative Petition S-01-2024, pursuant to
27 NRS 295.061, and submitted a Brief in Support of the Complaint. Subsequently, on February 14,
28

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1 NFFC filed a First Amended Complaint timely adding Initiative Petition S-03-2024 to their
2 challenge.

3 On January 29, 2024, Plaintiff DailyPay, Inc. ("DailyPay") filed a Complaint for
4 Declaratory and Injunctive Relief challenging the legal sufficiency of both Initiative Petition S-
5 01-2024 and Initiative Petition S-03-2024, pursuant to NRS 295.061.

6 On January 29, 2024, Plaintiffs Preferred Capital Funding - Nevada, LLC and Alliance For
7 Responsible Consumer Legal Funding (collectively, "Preferred Capital") filed a Complaint for
8 Declaratory and Injunctive Relief challenging the legal sufficiency of both Initiative Petition S-
9 01-2024 and Initiative Petition S-03-2024, pursuant to NRS 295.061.

10 On February 13, 2024, Plaintiffs ActiveHours, Inc. and Stacy Press (collectively,
11 "ActiveHours") filed a Complaint for Declaratory and Injunctive Relief challenging the legal
12 sufficiency of Initiative Petition S-03-2024, pursuant to NRS 295.061.

13 On or about February 22, 2024, the parties stipulated to, and the Court ordered, that the
14 filed suits be consolidated into one action to make the matter more efficient in terms of judicial
15 economy, the intervention of Ms. Feldman and Stop Predatory Lending NV, a Nevada nonprofit
16 corporation, as appropriate, and a briefing schedule. Ms. Feldman and Stop Predatory Lending NV
17 are collectively referred to herein as the "Proponents." After briefing, the Court held hearing on
18 the consolidated matters on March 22, 2024.

19 **B. CONCLUSIONS OF LAW**

20 **The Petition Violates Nevada's Single-Subject Rule.**

21 NRS 295.009(1) provides that "[e]ach petition for initiative or referendum must...
22 [e]mbrace but one subject and matters necessarily connected therewith and pertaining thereto."
23 NRS 295.009(2) further provides that an initiative "embraces but one subject and matters
24 necessarily connected therewith and pertaining thereto, if the parts of the proposed initiative... are
25 functionally related and germane to each other in a way that provides sufficient notice of the
26 general subject of, and of the interests likely to be affected by, the proposed initiative[.]" NRS
27 295.009(2). NRS 295.061 authorizes a challenge to a proposed initiative when it violates the
28 single-subject rule set forth in NRS 295.009(1)-(2). Specifically, "whether an initiative or

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1 referendum embraces but one subject and matters necessarily connected therewith and pertaining
2 thereto...may be challenged by filing a complaint in the First Judicial District Court." NRS
3 295.061(1).

4 Nevada's single-subject requirement "facilitates the initiative process by preventing
5 petition drafters from circulating confusing petitions that address multiple subjects." *Nevadans for*
6 *the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 902, 141 P.3d 1235, 1240 (2006). Thus,
7 "the single-subject requirement helps both in promoting informed decisions and in preventing the
8 enactment of unpopular provisions by attaching them to more attractive proposals or concealing
9 them in lengthy, complex initiatives (*i.e.*, logrolling)." *Las Vegas Taxpayer Accountability Comtee.*
10 *v. City Council of City of Las Vegas*, 125 Nev. 165, 176-77, 208 P.3d 429, 436-37 (2009). After
11 all, unlike other "means of enacting law, the initiative process typically does not allow for unput
12 in drafting proposed laws." *Id.*, 125 Nev. at 177 n. 6, 208 P.3d at 437 n.6 (citation omitted).

13 When considering a single-subject challenge, this Court must first determine the initiative's
14 purpose or subject, "and then determine if each provision is functionally related and germane to
15 each other and the initiative's purpose or subject." *Halton v. Nev. Voters First PAC*, 138 Nev. Adv.
16 Op. 45, 512, P.3d 309, 314 (2022). "To determine the initiative's purpose or subject, this court
17 looks to its textual language and the proponents' arguments." *Las Vegas Taxpayer*, 125 Nev. at
18 180, 208 P.3d at 439. Courts also will look at whether the description of effect articulates an
19 overarching purpose and explains how provisions relate to a single subject. *Id.* The proponents of
20 an initiative "may not circumvent the single-subject rule by phrasing the proposed law's purpose
21 or object in terms of 'excessive generality,'" nor "'join[] disparate provisions which appear
22 germane only to topics of excessive generality[.]'" *Id.* (quoting *Harbor v. Deukmejian*, 240
23 Cal.Rptr. 569, 742 P.2d 1290, 1303 (1987)).

24 The Petition violates Nevada's single-subject rule in several respects. First, by its own
25 description, the Petition embraces at least two disparate subjects in purporting to "establish[]
26 maximum interest rates charged to consumers, and shield[] more of people's savings and earnings
27 from garnishment than under current law." The Petition's proposed changes to NRS Chapter 21,
28 which contains Nevada's statutes on garnishment, execution, and exemptions from judgments,

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1 have no nexus to the Petition's other putative purpose of imposing maximum interest rates on
2 "loans" and other transactions. Imposing a maximum interest rate on lenders and others is not
3 "functionally related and germane to" shielding a judgment debtor's savings and earnings from
4 garnishment. Nor is shielding a judgment debtor's savings from garnishment a matter that is
5 "necessarily connected" with and pertaining to "Preventing Predatory Payday and Other Loans."
6 The shielding of debtor assets in the collection of judgments applies beyond those arising out of
7 the proposed "Preventing Predatory Payday and Other Loans Act." By the Petition's own text, it
8 is clear that the Proponents have improperly joined multiple discrete and disparate subjects
9 together into a single Petition, in violation of NRS 295.009's single-subject rule.

10 Second, the Proponents' arguments in favor of the Petition demonstrate that the Petition
11 embraces more than a single subject, even when including matters necessarily connected therewith
12 and pertaining thereto. In their Omnibus Response Brief, Proponents argue that the common policy
13 goal behind the Petition "is to establish standards by which to regulate usurious behavior by lenders
14 and others in Nevada," noting "the common usage of 'usury' is the lending of money at
15 unconscionable or exorbitant rates of interest." Omnibus Resp., at 1. But the Petition's proposed
16 changes concerning garnishment, writs of execution, the definition of "earnings" for purposes of
17 independent contractors versus employees, and other proposed changes, have nothing to do with
18 "the lending of money at unconscionable or exorbitant rates of interest." A debtor may become a
19 judgment debtor for reasons unrelated to "Predatory Payday and Other Loans." A judgment debtor
20 may be subject to garnishment for any number of reasons, including for unpaid debts that may or
21 may not be subject to any interest rate at all, much less any purportedly "unconscionable" interest
22 rate. To the extent the Proponents claim the Petition's overarching purpose is to prevent "the
23 lending of money at unconscionable or exorbitant rates of interest," the Proponents' argument
24 demonstrates that the Petition embraces multiple subjects, contrary to NRS 295.009's single-
25 subject requirement.

26 Further, to the extent the Proponents argue the Petition's disparate components are meant
27 "to achieve a single goal: ensuring Nevadans have better debt protections," the Proponents have
28 articulated an excessively generalized subject matter that, if adopted, would effectively nullify the

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1 single-subject rule. *Las Vegas Taxpayer Accountability Committee*, 125 Nev. 165, 181, 208 P.3d
2 429, 440 (determining that “the purported single subject articulated in appellants’ opening brief,
3 ‘voter approval of use of taxpayer funds to finance large new development projects,’” was “an
4 excessively general subject that cannot meet NRS 295.009’s requirement”). While the policy goal
5 of ensuring Nevadans have better debt protections may be laudable, those protections are distinct
6 from proposed laws affecting the act of lending (as the Petition asserts to do). Additionally, the
7 general scope of that goal could plausibly relate to any proposal on some level. Were such an
8 excessively generalized subject permissible, there would be no need for the single-subject rule.
9 As statutes are not created to be superfluous, though, the single-subject rule within NRS 295.009
10 must be given effect. To satisfy the single-subject rule, NRS 295.009(2) more particularly requires
11 “the parts of the proposed initiative or referendum” to be “functionally related and germane *to*
12 *each other* in a way that provides sufficient notice of the general subject of, and of the interest
13 likely to be affected by, the proposed initiative or referendum.” (Emphasis added).

14 The Petition utterly fails to meet NRS 295.009’s defined standard. Accordingly, the Court
15 finds that the Petition violates NRS 295.009’s single-subject rule and cannot be circulated.¹

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26 ¹ The Court has also considered the remaining arguments raised by Plaintiffs, including challenges to the Petition’s
27 description of effect, the Petition’s purported fiscal impacts, and the Petition’s arguable referendum on Senate Bill
28 290’s earned wage access provisions. In light of this Court’s conclusion that the Petition violates the single-subject
rule, the Court need not reach the Plaintiffs’ remaining arguments. *Miller v. Berk*, 124 Nev. 579, 582-89 (2008) (the
Court need not address issues that are unnecessary to resolve the case at hand); *Nelson/CLY Dispensary, LLC v. State
Dep’t of Health & Hum. Servs., Div. of Pub. & Behav. Health*, 134 Nev. 129, 136 n.2, 414 P.3d 305, 311 n.2 (2018).

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ORDER

Based on the foregoing findings of fact and conclusions of law:

1. **IT IS ORDERED** and declared that Initiative Petition S-01-2024 violates Nevada's single subject rule under NRS 295.009.

2. **IT IS FURTHER ORDERED** and declared that the Nevada Secretary of State is enjoined from permitting Initiative Petition S-1-2024 from being circulated for signatures.

Dated this 12th day of April, 2024.

William A. Maddox

District Court Judge

Respectfully Submitted by:

/s/ Matthew Morris
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6
7 **IN THE FIRST JUDICIAL DISTRICT COURT**
8 **OF THE STATE OF NEVADA IN AND FOR CARSON CITY**

9 NEVADANS FOR FINANCIAL CHOICE,
a Nevada Political Action Committee, and
10 CHRISTINA BAUER, an individual,

Lead Case No.: 24 OC 00018 1B
Dept. No.: II

11 Plaintiffs,

12 vs.

CASE APPEAL STATEMENT

13 KATE FELDMAN, an individual, STOP
PREDATORY LENDING NV, a Nevada
14 Nonprofit Corp., and FRANCISCO V.
AGUILAR, in his official capacity as
15 Nevada Secretary of State,

16 Defendants,

Consolidated with

18 DAILYPAY, INC., a Delaware
Corporation,

Case No.: 24 OC 00021 1B

19 Plaintiff,

Dept. No.: II

20 vs.

21 FRANCISCO V. AGUILAR, in his official
22 capacity as NEVADA SECRETARY OF
STATE,

23 Defendant,

24 and

25 STOP PREDATORY LENDING NV, a
26 Nevada Nonprofit Corp., and
KATE FELDMAN, an individual,

27 Intervenor-Defendants.
28

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1 PREFERRED CAPITAL FUNDING-
2 NEVADA, LLC, a Nevada limited liability
3 company, and ALLIANCE FOR
4 RESPONSIBLE CONSUMER LEGAL
5 FUNDING, an Illinois nonprofit
6 corporation,

7 Plaintiffs,

8 vs.

9 FRANCISCO V. AGUILAR, in his official
10 capacity as NEVADA SECRETARY OF
11 STATE, and KATE FELDMAN, an
12 individual,

13 Defendants,

14 and

15 STOP PREDATORY LENDING NV, a
16 Nevada Nonprofit Corp.,

17 Intervenor-Defendant.

Case No.: 24 OC 00023 1B

Dept. No.: I

18 ACTIVEHOURS, INC., a Delaware
19 corporation; STACY PRESS, an
20 individual,

21 Plaintiffs,

22 vs.

23 KATE FELDMAN, an individual; STOP
24 PREDATORY LENDING NV, a Nevada
25 Nonprofit Corp.; and FRANCISCO V.
26 AGUILAR, in his official capacity as
27 NEVADA SECRETARY OF STATE,

28 Defendants.

Case No.: 24 OC 00029 1B

Dept. No.: I

CASE APPEAL STATEMENT

Defendant KATE FELDMAN and Intervenor-Defendant STOP PREDATORY LENDING NV, by and through their undersigned counsel, and pursuant to NRS 41.670(4), hereby appeals the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PLAINTIFFS' LEGAL CHALLENGES TO INITIATIVE PETITION S-01-2024 that the Court entered on April 15, 2024.

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1. Appellant filing this case appeal statement: *Kate Feldman and Stop Predatory Lending NV*

2. Judge issuing decision, judgment, or order appealed from:
Hon. William A. Maddox

3. Appellant: *Kate Feldman and Stop Predatory Lending NV*

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4. Respondent: *Francisco V. Aguilar*

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Respondent: *Nevadans for Financial Choice and Christina Bauer*

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Respondent: *DailyPay, Inc.*

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1 COUNSEL OF RECORD:
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9 Respondent: *Preferred Capital Funding- Nevada, LLC, and Alliance For*
10 *Responsible Consumer Legal Funding*

11 COUNSEL OF RECORD:
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22 Respondent: *Activehours, Inc. and Stacy Press*

23 COUNSEL OF RECORD:
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5. Attorneys listed in sections 3 and 4 above are licensed to practice law in the State of Nevada.

6. Appellants were represented by counsel in the district court.

7. Appellants are represented by counsel on appeal.

8. No request has been made to proceed in forma pauperis.

9. The Complaints in the consolidated matter were originally filed as follows: 24 OC 00018 1B January 26, 2024; 24 OC 00021 1B January 29, 2024; 24 OC 00023 1B January 29, 2024; 24 OC 00029 1B February 13, 2024.

1 10. The operative complaint in the lead case of this matter challenges the
2 legal sufficiency of Initiative Petition S-01-2024 and Initiative Petition S-03-2024.
3 The operative complaint asks the district court to enjoin and prohibit the Secretary
4 of State from placing the Petitions on the 2024 general election ballot.

5 11. The case has not been subject of an appeal to or original writ proceeding
6 in the Supreme Court.

7 12. This appeal does not involve child custody or visitation.

8 13. This appeal does not involve the possibility of settlement.

9 **AFFIRMATION**

10 The undersigned hereby affirm that the foregoing document does not contain
11 the social security number of any person.

12 DATED this 16th day of April, 2024.

13 **BRAVO SCHRAGER LLP**

14
15 By: 
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 16th day of April, 2024, I served the foregoing
3 **CASE APPEAL STATEMENT** via electronic mail, per the February 22, 2024,
4 Stipulation and Scheduling Order of the Court, as follows:

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