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' OPENING 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 August 26, 2024.

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JURISDICTIONAL STATEMENT

This Court has jurisdiction over the instant appeal under NRAP 3A(b)(1) because it is an appeal from a final order resolving all claims presented to the district court, and pursuant to NRAP 3A(b)(3) because it is an appeal from an order granting injunctive relief in a petition challenge under NRS 295.061. The district court entered its final order on April 15, 2024, and Appellants filed their notice of appeal on May 7, 2024, within NRAP 4(a)(1)'s prescribed 30-day period.

ROUTING STATEMENT

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

STATEMENT OF THE ISSUES PRESENTED ON APPEAL

1. Whether S-03-2024 violates the single subject rule because its purported purpose is overly broad, thereby rendering the single subject rule nugatory.

2. Whether the district court abused its discretion by determining the purpose of S-03-2024 in contradiction to the Initiative's stated purpose, description of effect, and its proponent's argument.

3. Whether S-03-2024 violates the single subject rule because it attempts to address more than a single subject.

4. Whether S-03-2024's description of effect fails to properly inform voters of the consequences of the initiative being proposed.

I. STATEMENT OF THE CASE

On January 24, 2024, Respondent Kate Feldman filed an Initiative Petition, S-03-2024, (the "Initiative") with the Nevada Secretary of State. JA II A00215–A00232[1]. The Initiative seeks to amend the Nevada Revised Statute to include a new chapter entitled: "Chapter 604D: Preventing Payday and Other Loans Act," and to amend NRS 99.050 to reference this new proposed chapter.

On February 13, 2024, Appellants Activehours and Stacy Press filed a Complaint for Declaratory and Injunctive Relief Challenging Initiative Petition S-03-2024 pursuant to NRS 295.061. JA II A00205–A00261. Appellants Nevadans for Financial Choice and Christina Bauer, DailyPay, Inc., and Preferred Capital Funding-Nevada, LLC and Alliance for Responsible Consumer Legal Funding also filed complaints challenging the Initiative. On February 22, 2024, the parties stipulated that all complaints be consolidated into a single action and agreed on a briefing schedule for the Initiative challenges. JA III A00470–A00479.

On March 22, 2024, the district court heard oral argument from all parties and issued its ruling from the bench, declaring S-03-2004 was legally sufficient and could move forward. JA IV A00608–A00749. The parties were tasked with preparing a proposed written order which the district court entered on April 16, 2024. JA IV A00760–A00774. Activehours and Stacy Press appealed that decision on May 7, 2024.[2] JA V A00881–A00927.

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[1] Citations to Appellants' Joint Appendix shall be cited as "JA [Vol. No.] [Page No.].

[2] On January 5, 2024, Respondent Kate Feldman filed an almost identical initiative

II. STATEMENT OF RELEVANT FACTS

A. Respondent's Proposed Initiative Petition.

On January 24, 2024, Respondent Kate Feldman filed the Initiative S-03-2024 with the Nevada Secretary of State. JA II A00215–A00232. Through the Initiative, Respondent seeks to add a new chapter to the Nevada Revised Statutes, "Chapter 604D: Preventing Payday and Other Loans Act." The Initiative's named objective is "combatting predatory payday lending and other high-cost loans; ensuring that out-of-state lenders cannot flout Nevada law by making payday loans, other loans, or transactions subject to this chapter at unlawful rates to Nevada residents; and protecting law-abiding lenders from unfair competition by predatory, out-of-state entities." JA II A00217 at Sec. 2. The Initiative defines the "loans" subject to its provisions broadly as:

> (a) Money or credit provided to a consumer in exchange for the consumer's agreement to a certain set of terms, including, but not limited to, provisions for direct or indirect repayment, interest, fees, charges or other payments, or other conditions;
>
> (b) Any deferred deposit transaction or payday loan, installment loan, line of credit, retail installment sales contract, and motor vehicle retail

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petition, S-01-2024, to the Initiative that forms the basis of this appeal. Appellants Activehours and Stacy Press did not challenge that initiative petition; however, other Appellants in this appeal challenged the legal sufficiency of S-01-2024. Those challenges were consolidated with the challenges to S-03-2024, at issue in this case. The district court declared that S-01-2024 was invalid under Nevada law and enjoined the Nevada Secretary of State from permitting the petition from moving forward. That decision was appealed under Nevada Supreme Court Case No. 88526. On June 20, 2024, this Court affirmed the district court's decision.

> installment sales contract, and other closed-end or open-end credit; and
>
> (c) Any sale, assignment, order, or agreement for the payment of unpaid wages, salary, commissions, compensation, or other income, or any portion or amount thereof, whether earned, to be earned, or contingent upon future earnings, that is made in consideration for goods or services, credit, or the payment of money to or for the account of the person earning or receiving, potentially earning or receiving, the wages, salary, commissions, compensation, or other income.

JA II A00217–A00218 at Sec. 5.

The Initiative also includes within its broad reach any transaction for deferred deposit loans, high-interest loans, and title loans, all addressed in NRS Chapter 604A; refund anticipation loans, addressed in NRS Chapter 604B; consumer litigation funding transactions, addressed in NRS Chapter 604C; installment loans, addressed in NRS Chapter 675; retail installment transactions, addressed in NRS Chapter 97; loans secured by a life insurance or annuity contract, addressed in NRS Chapter 688A; loans made by a bank, savings bank, savings and loan association, or credit union, all addressed in NRS Chapters 662, 672, 673, and 677. JA II A00219–A00220 at Sec. 8. It does so with the caveat that the Initiative's proposed statutes will apply irrespective of what the corresponding statutes say. *Id*. The Initiative then proposes to cap the interest rate associated with

these varied transactions, notwithstanding any other provision of law, to 36%. JA II A00220.

In an attempt to capture the substance and purpose of the Initiative, it offers the following description of effect:

> This measure addresses high-interest lending practices by establishing maximum interest rates charged to consumers. Currently, most consumer loans have no interest rate cap. The proposed cap would set a maximum interest rate of 36% annually on the unpaid balance of the amount financed, and would apply to consumer loans; deferred-deposit transactions ("payday loans"); title loans; and other loan types dependent on future earnings and income. The initiative also prohibits evading the interest rate cap by structuring transactions to mask their nature as loans covered by this measure, or partnering with out-of-state lenders to violate the rate cap. The initiative voids transactions that violate the cap, and establishes civil penalties.

JA II A00227.

B. NRS Chapter 604D Establishes Framework for Earned Wage Access Services Defined as Non-Loan Transactions.

During the 2023 Legislative Session, Senate Bill 290 ("SB 290") was signed into law. JA II A00234–A00261. Now, SB 290 has been codified into the NRS at Chapter 604D—the same Chapter identified and proposed by the Initiative. NRS Chapter 604D establishes and defines the parameters of earned wage access

services. *Id*. Under this chapter, earned wage access services are defined as "the delivery to a user of money that represents earned but unpaid income. NRS 604D.060; *see also* JA II A00237 at Sec. 7. The statutes that establish earned wage access services expressly state that "nothing in [the] chapter shall be construed to cause: (a) Any earned wage access services provided by a licensee in compliance with this chapter to be deemed: (1) A loan or other form of credit." NRS 604D.190(1)(a)(1); *see also* JA II A00253 at Sec. 33. In other words, upon their creation, Nevada law prohibits earned wage access services from being categorized as loans or forms of credit.

NRS Chapter 604D further prohibits earned wage access service providers from being "subject to any of the provisions of law governing loans or money transmitters." *Id*. It prohibits licensees of earned waged access services "to be deemed a creditor, lender or money transmitter" or for fees associated with earned wage access services "to be deemed an interest or finance charge." *Id*. Rather, earned wage access service providers must provide users of earned wage access services with "at least one option for a user to obtain earned wage access services…at no cost to the user." NRS 604D.200(2)(d); *see also* JA II A00239 at Sec. 12.

III. SUMMARY OF THE ARGUMENT

The people's right to the initiative process is an important one, as are the statutory requirements that temper and guide proposed initiatives. The goal is to promote informed decision making through initiative petitions that provide sufficient context and information to Nevada voters. Two of those statutory

requirements are found in NRS 295.009 and require a proposed initiative to "[e]mbrace but one subject and matters necessarily connected therewith and pertaining there to," and to "[s]et forth…a description of the effect of the initiative." Both the single subject requirement and the requirement for a description of effect are integral to ensuring Nevada voters understand not only the proposed initiative, but also the effects of its potential enactment.

S-03-2024, the Initiative proposed by Respondent Kate Feldman, fails to abide by these statutory requirement resulting in an Initiative and description of effect that do not inform voters of integral aspects of the Initiative. The Initiative, through its text, tells voters it is intended to combat predatory payday lending and other high-cost loans; its description of effect supports this idea by stating the Initiative "addresses high-interest lending practices by establishing maximum interest rates charged to consumers." Yet, at the district court, Respondents argued the true aim of the Initiative was "an overall program of consumer debt relief," a purpose found neither in the Initiative or in the description of effect. And after argument, the district court came up with its own separate purpose for the Initiative in an obvious attempt to capture the breadth of the Initiative's grasp—to limit interest rates on consumer loan transactions.

In coming up with a "purpose" for the Initiative, the Court abused its discretion in looking past the Initiative itself, its description of effect, and Respondents' arguments. Despite this overstep, the stated purpose—whichever one is selected—is so overbroad it violates the single subject requirement. Not only is the breadth of the stated purpose in conflict with the single-subject requirement,

the Initiative itself embraces more than one subject. The Initiative attempts to limit loans and lending practices, but absent from its stated purpose(s) and description of effect is any indication that the Initiative also creates new categories of loans. It takes existing non-loan transactions such as earned wage access services, and through its overly broad definition of what a loan is, converts those non-loan transactions into loans. While the Initiative's proponents are free to create new categories of loans, that separate subject must be tackled through a separate initiative.

The Initiative and its description of effect fail to inform voters that the Initiative is creating a new category of loans, resulting in a legally deficient description of effect. There is no basis for a voter to look at the Initiative's description of effect, which informs voters it is intended to combat high-interest lending practices, and know that the Initiative also includes non-loan, non-interest bearing transactions by converting those transactions into loans.

Because of these deficiencies, the district court erred in denying Appellants' request for declaratory and injunction relief in order to enjoin the Initiative from moving forward. The Court should therefore reverse the district court's order and instruct the district court to enjoin S-03-2024 from moving forward.

IV. ARGUMENT

A. Standard of Review

This appeal is on the proper interpretation and application of NRS 295.009 to a proposed initiative 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) "[T]he party challenging an initiative petition bears the burden of demonstrating the initiative is clearly invalid." *Nevadans for Reprod. Freedom v. Washington*, 140 Nev. Adv. Op. 28, 546 P.3d 801, 806 (2024) (citing *Las Vegas Taxpayer Accountability Comm. v. City Council of Las Vegas (LVTAC)*, 125 Nev. 165, 176, 208 P.3d 429, 436 (2009)).

B. The Initiative is Clearly Invalid Because It Does Not Comply With The Single Subject Requirement.

While the people's authority to place initiatives on the ballot is broad, it is not without limitations. Initiative petitions must be limited to a single subject and must include a legally sufficient description of effect. *Washington*, 140 Nev. Adv. Op. 28, 546 P.3d at 806. NRS 295.009(1) requires that petitions for initiative or referendum must "[e]mbrace but one subject and matters necessarily connected therewith and pertaining thereto." An initiative "embraces but one subject and matters necessarily connected therewith and pertaining thereto, if the parts of the proposed initiative or referendum are 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 or referendum." NRS 295.009(2).

Here, the Initiative violates the single subject rule on multiple levels: (1) its stated purpose is so broad that it renders the single subject requirement

meaningless; and (2) the Initiative's various parts are not functionally related and germane to each other, thereby embracing more than a single subject.

1. The Initiative is Clearly Invalid Because its Purported Purpose is Excessively General.

The district court erred in determining a purpose for the Initiative outside of what the Initiative and Respondent actually proposed. It further erred in permitting the Initiative to move forward because its claimed primary purpose is overly broad. When considering a single subject challenge, the district court "must first determine the initiative's purpose or subject and then determine if each provision is functionally related and germane to each other and the initiative's purpose or subject." To determine an initiative's subject, the court ***must look to the text of the initiative petition, the proponent's arguments, and whether the description of effect articulates an overarching subject***. *LVTAC*, 125 Nev. at 180, 208 P.3d at 439 (emphasis added).

In its order, the district court determined that the purpose of the Initiative is "to limit interest rates on consumer loan transactions." JA IV A00754. This determination by the district court is in contrast to the Initiative itself, whose stated purpose is to "combat predatory payday lending and other high-cost loans," (JA II A00217 at Sec. 2) and whose description of effect touts the purpose of addressing "high-interest lending practices" (JA II A00227). In the underlying district court briefing, Respondent argued yet another stated purpose, "an overall program of *consumer debt relief*." JA III A00517 (emphasis in original). In other words, neither the initiative, the proponent's argument, nor the description of effect

articulated the purpose of "limiting interest rates on consumer loan transactions." The district court therefore abused its discretion in ruling on the Initiative's purpose as the ruling contradicts the Initiative itself as well as its proponent's argument and disregards controlling law which requires the stated purpose to be derived from the text of the initiative, proponent's argument, and the description of effect. *See MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016) (An abuse of discretion can occur if the district court "bases its decision on a clearly erroneous factual determination or it disregards controlling law."); *see also LVTAC, supra*.[3]

Even if the district court could simply substitute its stated purpose for that contained in the Initiative itself or argued by Respondent, the result is still a stated purpose so broad that it violates the single subject requirement. In *LVTAC*, the Court ruled that a stated purpose that is "excessively general" "cannot meet the NRS 295.009's requirement." 125 Nev. at 181, 208 P.3d at 440. In doing so, the Court relied on various California rulings, which "have held that an initiative proponent may not circumvent the single-subject rule by phrasing the proposed law's purpose or object in terms of 'excessive generality.'" *Id*. One of those rulings explains that a stated purpose "so broad that a virtually unlimited array of

[3] In this regard, Appellants agree with the dissenting opinion offered in *Helton, 138 Nev. at 494, 512 P.3d at 319.* A court should not have to search for a purpose broad enough to encompass an initiative petition. "Such application of the single-subject requirement is flawed. Indeed, the court should not need to search for an appropriate subject, as the subject should be clear from the initiative petition's textual language and description of effect" as required by *LVTAC*, 125 Nev. at 180, 208 P.3d at 439.

provisions could be considered germane thereto," would "essentially [obliterate] the constitutional [single subject] requirement." *Senate of State of Cal. v. Jones*, 21 Cal. 4th 1142, 1159–60 (1999) (quoting *Chem. Specialties Mfrs. v. Deukmejian*, 278 Cal. Rptr. 128, 132 (Ct. App. 1991).

For example, the stated purpose of regulating "the practices of the insurance industry" is excessively general because "the need for and provision of insurance…pervades virtually every aspect of life." *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 the all-encompassing umbrella of "practices of the insurance industry." *Id*. There is no clear boundary or limit as to the reach of such a purpose.

The same is true here. It is clear that the district court had to come up with a purpose for the Initiative that would encompass all its moving parts while simultaneously trying to limit the breadth of the stated purpose. And while the district court successfully reined in Respondent's excessively far-reaching argued purpose of "consumer debt relief," the result, a stated purpose of limiting interest rates on consumer loan transactions, is nevertheless excessively general.

Under that stated purpose, the Initiative extends to any transaction that includes "[m]oney or credit provided to a consumer in exchange for the consumer's agreement to a certain set of terms," among other specified transactions. JA II A00217 at Sec. 5. The Initiative, which is written to err on the side of inclusion, provides no clear boundary to the transactions that fall within its

reach. Therefore, any consumer transaction where an agreement is in place in exchange for money or credit, regardless of the terms of the agreement, falls within the Initiative's purview. Like insurance, and maybe more so than insurance, the exchange of money and credit exists in every aspect of life—mortgages, student loans, auto loans, personal loans, business loans, just to name a few. This is in addition to the specified loans outlined in the Initiative such as deferred deposit loans, title loans, refund anticipation loans, consumer litigation funding transactions, installment loans, etc. JA II A00219–A00220 at Sec. 8. There is simply no limit to the Initiative's reach.

This is in contrast to the finding in *Nevadans for Reprod. Freedom.* There, the proponents of an initiative petition relied on a purpose of "reproductive freedom" which was challenged as overbroad. 140 Nev. Adv. Op. 28, 546 P.3d at 807. The challenge was due in part to the initiative's span into a multitude of topics, including prenatal care, birth control, vasectomy, tubal ligation, and infertility care, to name a few. *Id*. at 804. There, the Court ruled the initiative was clearly "limited to protecting reproductive rights." *Id*. at 808. This makes sense—a purpose that deals with reproductive rights has a natural and biological boundary that limits the reach of the initiative itself. That limitation does not clearly exist with topics such as consumer debt and insurance that pervade all facets of life.

The same is true with the Court's ruling in *Helton*, where the initiative was limited to "the framework of the election of partisan officeholders." *Helton*, 138 Nev. at 487, 512 P.3d at 314. The purpose there presented a clear boundary—the initiative necessarily had to stay within the confines of the framework of

elections. The *Helton* Court compared that stated purpose to a purpose such as "how voters vote" which the Court determined would be too broad because it could then include "early voting, absentee ballots, machine voting, paper ballots," and an unlimited array of other topics. There would be no clear boundary to the reach of such an initiative. Like "how voters vote," an initiative with a purpose of "consumer debt relief" or even "to limit interest rates on consumer loan transactions" has no clear boundary and is therefore excessively general, in violation of the single subject requirement.

2. The Initiative is Clearly Invalid Because its Parts Are Not Functionally Related and Germane to Each Other Or The Initiative's Purpose As Required By NRS 295.009(2).

The Initiative includes a multitude of transactions that are not functionally related and germane to each other or the Initiative's purpose, in violation of NRS 295.009. The standard "that must be used" to determine "whether an initiative is comprised of more than one subject" is whether an initiative's parts are "'functionally related' and 'germane' to each other and the initiative's purpose or subject." *Las Vegas Taxpayer Accountability Comm.*, 125 Nev. at 180, 208 P.3d at 439 (citing *Nevadans for the Prot. Of Prop. Rights*, 122 Nev. at 906–07, 141 P.3d at 1243). This requirement prohibits the circulation of confusing petitions that address multiple subjects. *Helton*, 138 Nev. Adv. Op. 45, 512 P.3d at 314 ("The single-subject requirement facilitates the initiative process by preventing petition drafters from circulating confusing petitions that address multiple subjects.")

In *Nevadans for the Prot. of Prop. Rights*, the Court analyzed whether the various parts of an initiative were functionally related and germane to each other and to the initiative's subject of eminent domain. 122 Nev. at 908, 141 P.3d at 1244. In doing so, the Court determined two of the initiative's provisions, section 1 and section 8, were not related and germane to the initiative. *Id*. Section 1 of the eminent domain initiative stated, "[a]ll property rights are hereby declared to be fundamental constitutional rights and each and every right provided herein shall be self-executing." *Id*. The Court concluded this provision was not functionally related or germane to the eminent domain initiative for two separate reasons. First, section 1 of the initiative converted all property rights into fundamental rights, "thereby creating a broad new class of fundamental rights." *Id*. Second, including section 1 under the subject of eminent domain would "not provide sufficient notice of the subject addressed in section 1 or the interests likely to be affected by this section." *Id*.

Similarly, the Court determined that section 8, which proposed "government actions which result in substantial economic loss to private property shall require the payment of just compensation," was likewise not germane to the subject of eminent domain. *Id*. at 908–09, 141 P.3d at 1244–45. While the Court agreed section 8 would apply to inverse condemnation cases, which are the equivalent of eminent domain, the Court ruled, "it would also apply to myriad other government actions that do not fall even within the most broad definition of eminent domain." *Id*. For that reason, the Court determined section 8 far exceeded the scope of eminent domain. *Id*. at 909, 141 P.3d at 1245. With the shortcomings

of section 1 and section 8, the initiative embraced more than one subject, in violation of NRS 295.009. *Id*.

The Initiative here fails under the same analysis and for the same reasons. Section 5 of the Initiative creates a broad new class of loans that would not otherwise be categorized as loans by Nevada law. JA II A00217–A00218. Section 5 of the Initiative creates a category of loans for any transaction involving

> [a]ny sale, assignment, order, or agreement for the payment of unpaid wages, salary, commissions, compensation, or other income, or any portion or amount thereof, whether earned, to be earned, or contingent upon future earnings, that is made in consideration for goods or services, credit, or the payment of money to or for the account of the person earning or receiving, or potentially earning or receiving, the wages, salary, commissions, compensation, or other income.

Id. at Sec. 5(1)(c). Notably, NRS 604D regulates precisely the category of transaction outlined in section 5(1)(c) of the Initiative and specifies not only that these transactions are neither loans nor lines of credit, but also that these transactions are excluded from "any provisions of law governing loans or money transmitters." NRS 604D.190(1)(a); *see also* JA II A00253 at Sec. 33. So just like section 1 of the initiative in *Nevadans for the Prot. Of Prop. Rights* creates a broad new class of rights, section 5 of the Initiative here creates a broad new class of loans, and like with the eminent domain initiative, the Initiative here does not provide sufficient notice of the subject addressed in section 5, i.e. the creation of new categories of loans, or the interests likely to be affected by that section. The Initiative is therefore invalid because it embraces more than one subject—the

creation of a new category of loans *and* the limiting of interest rates on consumer loans[4].

The similarities to the eminent domain initiative do not end there however. Section 5 of the Initiative propose to include within the stated subject of "limiting interest rates on consumer loan transactions" a multitude of transactions including earned wage access services (outlined in NRS Chapter 604D). JA II A00217–A00218. Notably, earned wage access services do not charge consumers interest rates. *See* NRS 604D.190 ("Nothing in this chapter shall be construed to cause: [a]ny fee provided to a consumer by a provider in compliance of this chapter to be deemed an interest or finance charge."); NRS 604D.200 (requiring an earned wage access service provider to offer consumers "at least one option for a user to obtain earned wage access services from the applicant at no cost to the user."). And, as outlined above, earned wage access services are not loans. So while section 5 and section 8 of the Initiative do include consumer loans with interest rates charged to consumers within their broad grasp, they would also apply to transactions that are neither loans nor charge consumers interest rates.

Earned wage access services are not loans and do not charge consumers interest rates—they therefore do not fall within the purpose of "limiting interest rates on consumer loan transactions." For that reason, section 5 of the

[4] If an initiative's proponents wish to address more than one subject, they are free to do so, but must address separate subjects through separate petitions. *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 905, 141 P.3d 1235, 1243 (2006) ("the rule is nondiscriminatory, as it does not limit the subject matter of petitions in general; it merely limits petitioners to addressing one subject per petition.")

Initiative far exceeded the scope of "limiting interest rates on consumer loan transactions." A service that is neither a loan nor permitted to charge consumers interest cannot be "functionally related or reasonably germane" to a stated purpose of limiting interest rates on consumer loans, just like a government action which results in economic loss but does not constitute eminent domain cannot be functionally related to a subject of "eminent domain." Accordingly, the Initiative fails to satisfy the requirements of NRS 295.009 both because its parts are not functionally related and germane to each other or the Initiative's purpose and because the Initiative embraces more than one subject.

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, much like the Initiative itself, fails to properly inform voters of the consequences of the Initiative and is therefore misleading and inadequate. NRS 295.009(1)(b) requires an initiative to set forth "a description of the effect of the initiative or referendum if the initiative or referendum is approved by the voters." The description of effect must be straightforward, succinct, and nonargumentative summary of what the initiative is designed to achieve and how it intends to reach those goals." *Helton*, 138 Nev. Adv. Op. 45, 512 P.3d at 316. The 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). While a description of effect does not need to explain every possible effect, it must, at a minimum, accurately describe the main consequences of the initiative.

See, e.g., LVTAC, 125 Nev. at 184, 208 4 P.3d at 441 (finding description of effect materially misleading where it "materially fails to accurately identify the consequences of the referendum's passage.")

In *Helton*, proponents of an initiative petition faced multiple challenges to that initiative's description of effect. The initiative in *Helton* dealt with changes to Nevada's primary elections for partisan offices and with general elections, changing those elections to a rank-choice voting format. *Helton*, 138 Nev. at 484, 512 P.3d at 312–13. The challengers of the initiative argued, among other things, that the initiative's description of effect was misleading because it stated that "traditionally, a candidate receiving first-choice votes of more than 50% wins," when in reality, a candidate can also win "by receiving the most votes even if their total number of votes does not exceed 50%." *Id*. at 490, 512 P.3d at 317. The Court ruled this was insufficient to invalidate the description of effect because a candidate that receives more than 50% of the votes does win, even if a candidate can also win with less than 50% of the votes. *Id*. So while the Court acknowledged the description of effect could have been worded better, the description was "not incorrect in its statement that *currently* a candidate who receives 50% of the vote wins." *Id* (emphasis added).

The opponents of the initiative in *Helton* also argued that the description of effect was inadequate "because it fails to mention what happens when a voter does not rank all of the candidates (their vote may not count)." *Id*. at 491, 512 P.3d at 317. The Court disagreed, stating that "the public is smart enough to understand that with ranked-choice voting, if all the candidates a voter ranked

are eliminated, that voter's vote will not go toward any of the remaining candidates the voter did not rank." *Id*.

The deficiency to the Initiative's description of effect here surpass those that the Court considered acceptable in *Helton*. The Initiative's description of effect is legally deficient and misleading because it does not fully explain the ramifications of the Initiative's proposed amendment to Nevada law, leaving Nevada voters ill-informed of the consequences of the Initiative. The Initiative's description of effect begins by explaining the overall purpose—albeit a different purpose that the Initiative's purported "primary purpose"—of the Initiative: to address "high-interest lending practices by establishing maximum interest rates charged to consumers." Nowhere does the description of effect inform voters that in order to achieve this goal, it will first create additional categories of loans that *currently* do not exist and would not otherwise be loans ***but for the Initiative***. This is a stark contrast to *Helton* where the initiative correctly identified Nevada's current plurality voting system, albeit in poor terms.

It is not readily apparent in the Initiative's description of effect that the Initiative would apply to transactions such as earned wage access services because those services are neither loans nor charge interest rates under current Nevada law. And unlike in *Helton*, even a "smart" public would have no basis to understand the Initiative includes non-loan, non-interest bearing transactions within its described effect of capping consumer loan interest rates. These deficiencies in the description of effect run afoul of the description's purpose of preventing voter confusion and promoting informed decision. *See Nevadans for*

Nevada v. Beers, 122 Nev. 930, 939, 142 P.3d 339, 345 (2006) (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.'") (quoting *Campbell v. Buckley*, 203 F.3d 738, 746 (10th Cir. 2000)). Voters cannot make an informed decision when the description of effect fails to explain that the Initiative intends to expand the meaning of the term "loan" to include non-loan, non-interest bearing transactions.

Because the Initiative's description of effect fails to sufficiently identify what the Initiative proposes and how it intends to achieve that purpose, the description of effect is legally deficient under Nevada law.

V. 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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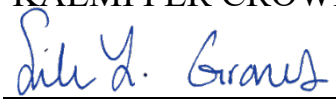

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CERTIFICATE OF COMPLIANCE

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 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, and contains 5,466 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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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2024, a true and correct copy of **APPELLANTS ACTIVEHOURS, INC.'S AND STACY PRESS' OPENING 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