

**IN THE SUPREME COURT OF THE  
STATE OF NEVADA**

DAILYPAY, INC., a Delaware Corporation; NEVADANS FOR FINANCIAL CHOICE, a Nevada political action committee; CHRISTINA BAUER, an individual; ACTIVEHOURS, INC., A Delaware Corporation; STACY PRESS, an individual; PREFERRED CAPITAL FUNDING NEVADA LLC, a Nevada Limited Liability Company; and ALLIANCE FOR RESPONSIBLE CONSUMER LEGAL FUNDING, an Illinois nonprofit corporation,

Appellants,

vs.

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

Respondents.

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

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## **NRAP 26.1 DISCLOSURE**

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

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

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

DATED this 26th day of August 2024.

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## **JURISDICTIONAL STATEMENT**

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

## **ROUTING STATEMENT**

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



## **STATEMENT OF THE ISSUES ON APPEAL**

- I. Whether Petition S-03-2024’s proposed “Preventing Predatory Lending and Other Loans Act violates Nevada’s “single-subject” rule by penalizing non-loan financial services and non-lending entities.
- II. Whether Petition S-03-2024’s 113-word description of effect is misleading and legally deficient under NRS 295.009(1)(b).
- III. Whether Petition S-03-2024 is invalid for failing to include the full text of NRS Chapter 604D, which codifies SB 290 (Nev. 2023).

## INTRODUCTION

Petition S-03-2024 (the “Petition”) violates three of Nevada’s foundational rules governing initiative petitions—the single-subject requirement, the description-of-effect requirement, and the “full-text” requirement. Each of these requirements exists to facilitate direct democracy and to protect the fundamental right to participate in an informed and transparent ballot initiative process. In violating these rules for ballot initiatives, the Petition undermines and infringes on the very right the Petition circulators claim to advance.

The Petition uses inflammatory language to entice voter support for a measure claiming to “combat[ ] predatory lending and other high-cost loans.” But the Petition’s fine-print provisions and complex definitions reach beyond the Petition’s stated objective. The Petition in fact seeks to restrict financial services that are not loans, and to penalize businesses that are not lenders. The Petition lacks a straightforward description of its substantial changes to Nevada law, and distracts voters with claims of targeting “unfair competition by predatory out-of-state entities.”

The Petition falls far short of the constitutional and statutory standards meant to facilitate a fair and transparent initiative process.

The district court erred as a matter of law in disregarding these deficiencies. This Court should now reverse and remand.

### **STATEMENT OF THE CASE & PROCEDURAL HISTORY**

Among other proposed amendments to Nevada law, the Petition takes aim at recently passed legislation, Senate Bill 290 (“SB 290”), which became law during the 2023 Nevada Legislative Session. I Appellants’ Appendix (AA) at 120-136. At Section 15, the Petition singles out “earned wage access services” and “entities licensed under the laws of this State to provide earned wage access services as defined in [SB] 290 of the 82nd Regular Session of the Nevada Legislature[.]” I AA 126. A discussion of SB 290 and earned wage access services is essential to understanding the posture of this appeal and the Petition’s constitutional infirmities.

#### ***SB 290 (Nev. 2023) and Earned Wage Access Services.***

With the passage of SB 290, the Nevada Legislature authorized the licensure and regulation of earned wage access services, which allow a worker to access their already earned wages. II AA 336-363. The touchstone of SB 290 is its provision that “earned wage access services provided by a provider licensed [under SB 290] are not a loan or money transmission and are not subject to any provisions of existing law governing loans and money transmitters.” II AA 337.

During the pendency of these proceedings, the Nevada Legislature codified SB 290 at NRS Chapter 604D. *See*, NRS 604D.010-604D.900; 2023 Nev. Stats. Ch. 400, at 2393-2413. Thus, NRS Chapter 604D (the same chapter the Petition seeks to replace, I AA 121, 127) now sets forth the legislature’s policy determinations concerning the licensure and regulation of earned wage access services and service providers.<sup>1</sup> The Petition targets these services and service providers. I AA 126.

Under Nevada law, “earned wage access” services are “the delivery to a user of money that represents *earned* but unpaid income.” NRS 604D.060(1) (emphasis added). That is, earned wage access services facilitate access to money that a worker has *already earned*, rather than accessed to borrowed money that a worker may earn in the future. Accordingly, under Nevada law, earned wage access services are neither

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<sup>1</sup> DailyPay requested that this Court invalidate the Petition because the Petition Circulators, not this Court, should correct the Petition’s references to NRS Chapter 604D. *See*, Appellant DailyPay’s Limited Non-Opposition to Motion for Summary Reversal (Doc. 24-20014) (June 7, 2024). This Court instructed that DailyPay could seek relief pending appeal in the district court, if warranted. *See*, Order Regarding Motions (July 11, 2024), at 2 n.3. DailyPay thereafter sought relief in the district court under NRCP 62 and NRCP 62.1, which the district court denied on Aug. 22, 2024. *See*, Order Denying Plaintiff DailyPay, Inc.’s Motion for Relief Pending Appeal, Case No. 25 OC 00018 1B (Aug. 22, 2024).

loans, nor credit products, and earned wage access service providers may not charge interest nor late fees. NRS 604D.190(1)(a)(1)-(3). Earned wage access service providers are neither lenders nor subject to Nevada's lending laws. NRS 604D.190(1)(b).

Nevada statute further mandates that earned wage access services are non-recourse financial products, *i.e.*, service providers may not “charge a late fee, deferral fee, interest or any other penalty or charge for failure to pay[.]” NRS 604D.410(1)(c). Service providers may not report a user's inability to pay to a debt collector, nor seek legal recourse against a user for non-payment. NRS 604D.410(1)(d)-(e). Service providers must offer “at least one option for a user to obtain earned wage access services...at no cost to the user.” NRS 604D.200(2)(d). These requirements reflect the foundational premise of earned wage access services in Nevada: It does not constitute “lending” to enable a worker to access money the worker has already earned. NRS 604D.190.

DailyPay is an employer-integrated earned wage access service provider that partners with hundreds of Nevada employers to provide earned wage access services to thousands of Nevada workers. I AA 71. As an “employer-integrated” provider, DailyPay provides “the delivery to a user of access to earned but unpaid income determined based on

employment, income, or attendance data obtained...from an employer, including...an employer’s payroll service provider.” NRS 604D.090. In other words, employer-integrated earned wage access services necessarily involve third-party entities such as employers and payroll service providers, who are not lenders, but who facilitate and offer employer-integrated earned wage access services to their workers. *Id.*

***The Petition’s “Preventing Predatory Payday and Other Loans Act.”***

Respondents filed the Petition on January 24, 2024, proposing to add “a new Chapter to be designated [NRS] Chapter 604D,” enacting the “Preventing Predatory Payday and Other Loans Act.” I AA 120-121. The Petition’s stated purposes are “combatting predatory 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...and protecting law-abiding lenders from unfair competition by predatory, out-of-state entities.” I AA 121. The Petition would impose a 36% annual percentage rate for “any loan or other transaction subject to” the Petition. I AA 124 (Petition, Section 9).

Despite its title and self-proclaimed purposes concerning “loans” and “out-of-state” “predatory” lenders, the Petition’s reach is far broader. The

Petition also applies to non-loan, non-recourse financial services, including earned wage access services, among others. I AA 121-123. The Petition seeks to accomplish this through expansively re-defining the term “loan” to include services that are not loans or credit products, including “any...agreement for the payment of unpaid wages...whether earned, to be earned, or contingent upon future earnings....made in consideration for...the payment of money to...the person earning or receiving....the wages[.]” I AA 122. While the Petition’s stated purpose is limited to restricting “predatory” “out-of-state” lenders, by its own text, the Petition will penalize Nevada employers who offer earned wage access services, and Nevada workers accessing their own already-earned wages, “without regard to whether the transaction carries required charges or payments.” *Id.* (Petition, Secs. 5(1)(c)-5(2)). Put simply, the Petition will penalize an employer for facilitating a worker’s access to their own earned wages, at no cost to the worker, access the Petition misleadingly treats as “predatory lending.” *Id.*

Despite its title and its stated purpose, the Petition applies not only to “lenders,” but to a variety of entities that have nothing to do with lending, including earned wage access service providers and the third-party employers, payroll servicers, and others with whom they partner.

NRS 604D.080-604D.090. The Petition aims to punish such non-lenders by virtue of its application to “any payday lender *or other person* that...[m]arkets, offers, brokers, arranges, facilitates, makes or services a loan as defined in Section 5 [of the Petition],” and “any payday lender *or other person* that...[i]s deemed to be subject to this chapter...or is engaged in a transaction that is in substance a disguised loan or other transaction subject to this chapter[.]” (emphases added).

What’s more, because the Petition includes earned wage access services in its definition of “loan,” the Petition would also punish a worker who accesses his or her own earned wages. I AA 122. The Petition applies “to any payday lender *or other person* that...[a]cquires a whole or partial interest in a loan or other transaction subject to this chapter” I AA 122, and to any “other person” who “*is engaged in a transaction* that is in substance a disguised loan or other transaction subject to this chapter[.]” I AA 123 (Petition, Sec. 7(5)(emphases added). By definition, an earned wage access user is “engaged in” an earned wage access transaction. NRS 604D.170. The Petition will therefore punish not only the service provider, and the third-party employer who facilitates the service, but also the worker who is merely accessing money the worker has already earned.



At Section 15, the Petition explicitly targets SB 290 and earned wage access service providers. I AA 126. Section 15 purports to delay Section 9’s proposed interest rate as to licensed earned wage access service providers until January 1, 2030. *Id.* This delay, however, is limited only to Section 9’s proposed interest rate cap and applies exclusively to “entities licensed” as service providers—the proposed delay does not apply to third-party entities with whom employer-integrated service providers (like DailyPay) must partner to offer services to Nevada workers, nor does it apply to workers who “engage” in an earned wage access transaction under Section 7. I AA 122. With the limited exception for Section 9’s interest rate cap, the rest of the Petition will apply to DailyPay, to its employer partners, to earned wage access users, and to others.

The Petition’s Section 13 proposes several punitive measures. I AA 125-126. Should the Petition be approved, employer-integrated earned wage access service providers and the employers and payroll servicers with whom they partner, will be subject to civil penalties, restitution damages, fines ranging from \$250 to \$1,000 per violation, as well as “any other legal or equitable relief that the court deems appropriate in addition to any other remedies provided at law.” *Id.*

***DailyPay and Other Sue to Enjoin the Petition.***

On January 26, 2024, Appellants Nevadans for Financial Choice and Christina Bauer filed a Complaint for Declaratory and Injunctive Relief challenging the Petition's legal sufficiency pursuant to NRS 295.061. I AA 1-67.

DailyPay filed its Complaint for Declaratory and Injunctive Relief challenging the Petition on January 29, 2024. I AA 68-144. DailyPay's Complaint specifically challenged the Petition's compliance with NRS 295.009's single-subject and description-of-effect rules, and the Nevada Constitution's "full- text" requirement, among others. I AA 80-93.

Preferred Capital Funding-Nevada LLC and Alliance for Responsible Consumer Legal Funding also filed a Complaint for Declaratory and Injunctive Relief against the Petition, I AA 145-204, as did Activehours, Inc., and Stacy Press. II AA 205-261. The parties to the underlying actions stipulated to consolidating into one action for purposes of efficiency and to promote judicial economy. III AA 470-479. The parties also stipulated to the intervention of Respondents Ms. Feldman and Stop Predatory Lending NV. *Id.* Following the parties' briefing, the district court held a hearing on March 22, 2024. IV AA 608-749.

### *The District Court Upholds the Petition.*

The district court upheld the Petition, concluding that “the primary purpose of the Petition is to limit interest rates on consumer loan transactions, and that all components of the Petition are functionally related and germane to that purpose.” IV AA 754 (emphasis added). The district court further concluded “[e]ach of the provisions of the Petition either establish that limit, make conforming or ancillary changes to other statutes or...provide enforcement mechanisms necessary and germane to the operation of the Petition’s purpose.” IV AA 754-755.

The district court also held “that the Petition’s description of effect meets the requirements of Nevada law.” IV AA 756. The district court also rejected DailyPay’s “full-text” argument, concluding that “the Petition contains every provision that is proposed to be circulated for signatures and to be considered by the electorate, and that therefore there is no violation of Article 19, Section 3.” IV AA 757. DailyPay’s appeal timely followed. IV AA 775-826.

### **SUMMARY OF THE ARGUMENT**

The district court erred as a matter of law in holding that the Petition does not violate NRS 295.009’s single-subject requirement. The Petition claims it is limited to “combatting predatory payday lending and

other high-cost loans” and “ensuring that out-of-state lenders cannot flout Nevada law by making payday loans, other loans, or transactions subject to [the Petition’s proposed Act].” I AA 121. But the Petition goes much further to restrict products that are not loans, nor credit, and to punish service providers, third-party employers, and other businesses which are not lenders but which facilitate earned wage access services. I AA 121-125. The Petition’s emphasis on “loans” and “predatory” “out-of-state lenders” does not apprise these businesses that they, too, will be affected by the Petition’s proposed restrictions. Thus, the Petition violates NRS 295.009(2)’s single-subject rule because the Petition’s components do not relate “to each other in a way that provides sufficient notice of the general subject of, and of the interests likely to be affected by, the proposed initiative.” NRS 295.009(2).

Further, the district court erred as to the Petition’s description of effect. The description of effect makes no mention whatsoever of the material effects concerning earned wage access services and service providers under existing law. The Petition will turn an entire statute—NRS Chapter 604D—on its head. Yet the description makes no reference of this significant change to Nevada law. I AA 131.

The district court also erred in failing to require the Petition to include the full text of SB 290 (2023) (now, NRS Chapter 604D), which the Petition would amend and effectively repeal. The Petition provides no notice of the provisions of existing law which the Petition seeks to change.

The district court should have enjoined the Petition as a matter of law, and this Court should reverse and remand.

## **ARGUMENT**

### **I. Standard of Review**

This case concerns the interpretation and enforcement of NRS 295.009(1)-(2)'s single-subject and description-of-effect rules, and Nevada's constitutional rules for ballot measures under Articles 4 and 19, as applied to Initiative Petition S-03-2024 (the "Petition"). "Questions of law, including questions of constitutional interpretation and statutory construction, are reviewed *de novo*." *Peck v. Zipf*, 133 Nev. 890, 892, 407 P.3d 775, 778 (2017); *Helton v. Nev. Voters First PAC*, 138 Nev. Adv. Op. 45, 512 P.3d 309, 313 (2022) (applying *de novo* review to a petition challenge); *Education Freedom PAC v. Reid*, 138 Nev. Adv. Op. 47, 512 P.3d 296, 302 (2022) (same).

## II. The Petition Violates NRS 295.009's Single-Subject Rule.

The district court incorrectly held the Petition meets NRS 295.009(1)-(2)'s single-subject requirements. IV AA 754-755. In reaching its holding, the district court failed to apply NRS 295.009(2).

A “petition for initiative or referendum must...[e]mbrace but one subject and matters necessarily connected therewith and pertaining thereto.” NRS 295.009(1)(a). A petition meets the single-subject requirement “if the parts of the proposed initiative...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.” NRS 295.009(2). “The single-subject requirement helps both in promoting informed decisions and in preventing the enactment of unpopular provisions by attaching them to more attractive proposals or concealing them in lengthy, complex initiatives (*i.e.*, logrolling).” *Las Vegas Taxpayer Accountability Cmte. v. City Council of City of Las Vegas*, 125 Nev. 165, 176-77, 208 P.3d 429, 436-37 (2009) (quoting *Nevadans for Prop. Rights v. Sec’y. of State*, 122 Nev. 894, 905, 141 P.3d 1235, 1242 (2006)). And “to determine the initiative’s purpose or subject, this Court looks to its textual language and the proponents’

arguments.” *Id.* at 180, 208 P.3d at 439 (citing *Nevadans for Prop. Rights*, 122 Nev. at 907, 141 P.3d at 1243).

**A. The District Court Disregarded NRS 295.009(2).**

NRS 295.009(2) requires the component parts of the Petition to be “functionally related and germane to each other *in a way that provides sufficient notice of the general subject of, and of the interests likely to be affected by*, the [Petition].” NRS 295.009(2) (emphasis added). “NRS 295.009(2) plainly describes the standard that must be used in determining whether an initiative is comprised of more than one subject: each initiative’s parts must be ‘functionally related’ and ‘germane’ to each other and the initiative’s purpose or subject.” *Id.* at 180, 208 P.3d at 439 (citing *Nevadans for Prop. Rights*, 122 Nev. at 906-07, 141 P.3d at 1243).

The Petition fails to meet this standard by failing to fully and accurately state what it would achieve if approved. While claiming its purpose is to restrict “predatory” payday loans and combat “out-of-state” payday lenders, the Petition will actually affect the interests of non-lenders, and non-borrowers, by restricting and penalizing services that merely facilitate access to a workers’ already earned wages. NRS 604D.050-604.060. None of these interests are germane to the Petition’s stated purpose concerning “predatory lending”, nor are voters sufficiently

apprised that the Petition will adversely affect these interests, as NRS 295.009(2) requires.

Respondents urged the district court to ignore NRS 295.009(2)'s explicit single-subject standard, contending that "nothing in law or the Nevada Supreme Court's jurisprudence requires each provision of an initiative to be functionally related and germane to *each other*; rather, they need only be functionally related and germane to the initiative's overall policy goal." III AA 520. Respondents further argued that "as long as the primary purpose of a proposed petition is identifiable, and as long as its components relate functionally to that primary purpose, it matters not if the measure affects one or a hundred chapters of the NRS." III AA 521. The district court erred to accept Respondents' reasoning, concluding that "the Petition's text, its description, and the arguments of the Proponents in briefing...confirm the Petition's primary purpose." IV AA 755.

The district court's conclusion flatly contradicts NRS 295.009(2) and this Court's precedent enforcing it. While these proceedings were underway, this Court decided in *Nevadans for Reproductive Freedom v Washington* that NRS 295.009(2)'s language controls a single-subject analysis, and affirmed that "a petition meets [NRS 295.009(1)'s] single-



subject requirement if its provisions ‘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.’” 140 Nev. Adv. Op. 28, 546 P.3d 801, 806 (April 18, 2024) (emphasis added).

The district court erred in accepting Respondents’ invitation to disregard NRS 295.009(2). IV AA 754-755. In adopting Respondents’ theory, the district court cited NRS 295.009(2), but concluded that “the primary purpose of the Petition is to limit interest rates on consumer loan transactions, and that all components of the Petition are functionally related and germane to that purpose.” IV AA 754. But the district court made no attempt to reconcile the Petition’s “primary purpose” of limiting interest rates on “consumer loan transactions,” with the parts of the Petition that restrict non-loan, non-recourse earned wage access services that do not even charge interest. NRS 604D.190. The district court failed to apply NRS 295.009(2)’s standard, disregarding that the Petition’s emphasis on so-called “loans” and on “predatory lenders” does not apprise Nevada voters at all of the various interests that the Petition will affect, including the interests of third-party employers who facilitate access to a

worker's earned wages, and the interests of earned wage access users who are accessing their own earned wages. NRS 604D.090; NRS 604D.170.

In failing to properly apply NRS 295.009(2), the district court overlooked that the Petition will effect a bait-and-switch, leading Nevada voters to believe they are supporting a measure that cracks down on "out-of-state" "payday lending," while the Petition's fine print actually punishes a host of Nevada service providers and employers that are not "lenders", and that offer services that allow workers to access money they have already earned. NRS 604D.170. NRS 295.009(2) exists to apprise Nevada voters of the effects of a measure they are asked to support. The district court erred in failing to apply NRS 295.009(2) to the Petition's various components.

**B. The Petition's Restrictions on Earned Wage Access Are Not "Functionally Related and Germane To" Preventing "Predatory Lending."**

The Petition's text demonstrates its proposed components are not "functionally related and germane to each other," as NRS 295.009(2) requires.

At Section 5(1)(c) the Petition would penalize a worker for accessing their already-earned wages. I AA 121-122. The Petition transforms access to a worker's own money, which is already earned, into a "loan" by

including “[a]ny...agreement for the payment of unpaid wages, salary, commissions, compensation, or other income...*whether earned*, to be earned, or contingent upon future earnings,” in its definition of a “loan.” *Id.* But nothing in the Petition explains how restricting a worker’s access to their own earned wages will “Prevent Predatory Payday and Other Loans,” which is what the Petition’s title and description of effect (and what the district court) identified as its intended purpose. I AA 121.

In fact, restricting and penalizing a worker’s access to their already earned wages will effectuate the very opposite of the Petition’s stated objective. In authorizing earned wage access services, the legislature concluded as much in passing SB 290 (now NRS Chapter 604D). The legislature enacted a regulatory framework for earned wage access services precisely because such services provide an alternative to predatory lending practices. One of SB 290’s sponsors, Senate Majority Leader Cannizzaro, testified that earned wage access services will offer “a safe and secure means for Nevada families to avoid predatory credit finance. Earned wage access allows a worker...to cover an unexpected expense to access money they have already earned.” *Hearing on SB 290*, Nev. Sen. Commerce & Labor Cmte. Mins. (April 5, 2023) at 42. Sen. Jeff Stone expressed his “enthusiastic support” for SB 290, which he stated

would help “many blue-collar workers in Nevada” by giving workers “an opportunity to tap their own wages without paying significant fees or significant interest rates. They are getting their own money...[SB 290] will probably have the biggest impact on many of our citizens who need emergency help. This is their money.” *Nev. Sen. Daily Journal* (82nd Leg. Nev., May 25, 2023), at 314. See *Columbia/HCA Healthcare Corp. v. Eighth Judicial Dist. Court*, 113 Nev. 521, 531, 936 P.2d 844, 850 (1997) (citing legislator testimony, discussion, and committee minutes to determine legislative intent).

The legislature determined that allowing a worker to access his or her own earned money is not a loan. The Petition, while claiming it will help “combat” so-called “predatory” lending, will effectuate the very opposite of its stated purpose, by restricting and penalizing a worker’s access to money they’ve already earned. Such a restriction cannot be said to functionally relate to the Petition’s stated purpose, and demonstrates the Petition’s failure to meet the single-subject requirement.

**C. The Petition’s Effective Repeal of SB 290 Is the Type of “Logrolling” NRS 295.009 Exists to Prevent.**

The Petition’s restrictions on earned wage access raise demonstrate the type of “logrolling” concerns that “the single-subject requirement is intended to prevent.” *Nevadans for Reproductive Freedom*, 140 Nev. Adv.

Op. 28, 546 P.3d at 807. “Logrolling” involves “an unpopular provision typically...buried in the text of an initiative addressing a more popular provision that the proponent expects will easily be approved by the voters.” *Id.* (citing *Nevadans for Protection of Property Rights*, 122 Nev. at 922, 141 P.3d at 1254 (Hardesty J., concurring and dissenting)). “[T]he single-subject requirement aims to prevent logrolling by ensuring that the voters’ attention is focused on the one subject being advanced, ‘without creating confusion over what that subject is, and without making them choose between competing policy goals.’” *Id.*

The Petition’s carefully chosen inflammatory language targeting “predatory payday lending” “high-cost loans” and “out-of-state lenders,” is meant to focus voters’ attention on objectives that are, of course, easy to support. I AA 121. But the use of such language warrants exacting scrutiny of the entirety of the Petition’s text, because any manner of otherwise unpopular provisions could understandably be overlooked by a Nevada voter asked to support a measure cracking down on “predatory, out-of-state entities.” *Id.* Looking beyond the references to “predatory” “out-of-state” bogeymen, one finds the Petition’s effects are much broader, and that the Petition will upend popular legislation passed by a broad, bipartisan consensus.

To be sure, such a proposal presented as a standalone measure would raise little concern about “logrolling.” But this Petition combines with an enticing claim of cracking down on “unfair competition” several other complex changes to existing law, including proposed fees, penalties, and other liability, that presumably would not stand on their own merit. The Petition’s effective repeal of SB 290 (now NRS Chapter 604D), and the Petition’s restrictions preventing a worker from accessing their own earned wages, is an obvious example of a proposal that could not stand on its own merit. SB 290 passed nearly unanimously, with broad bi-partisan support, and as one lawmaker described it, “will probably have the biggest impact on many of our citizens who need emergency help.” I AA 84 (citing *Nev. Sen. Daily Journal* (82nd Leg. Nev., May 25, 2023) (Floor Statement of Sen. Jeff Stone supporting SB 290)).<sup>2</sup> An opponent seeking voter repeal of SB 290 would obviously prefer to do so with the help of language targeting so-called “predatory out-of-state entities.” I AA 121.

The Petition’s proponents seek to repeal legislation under the guise of enticing “predatory payday lending” language. Burying complex

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<sup>2</sup> It’s also notable that the legislation passed by more than a two-thirds supermajority. See, Nev. Leg. Counsel Bureau SB 290 Overview <https://www.leg.state.nv.us/App/NELIS/REL/82nd2023/Bill/10146/Votes> (accessed Aug. 23, 2024).

changes to existing law underneath claims of targeting “predatory lenders,” demonstrates the sort of “logrolling” that NRS 295.009’s single-subject rule protects against. The district court erred in failing to recognize the Petition’s “logrolling” elements.

**III. The Petition’s 113-Word Description of Effect is Insufficient, Argumentative, and Misleading.**

The district court erred in holding the Petition’s 113-word description of effect sufficiently informs voters concerning the Petition’s material effects on existing law. IV AA 755. Despite using little more than half of the statutorily allowed 200 words, the description of effect makes no reference to the significant changes the Petition seeks to effectuate to Nevada law concerning earned wage access services under NRS Chapter 604D. At minimum, the Petition’s proponents should be required to amend the description of effect to explain current law authorizing earned wage access services, and disclose to voters how the Petition proposes to change existing law by classifying earned wage access services as “loans.” NRS 295.015(2) provides for this exact remedy and the Petition circulators have designated Ms. Feldman to carry it out. 1 AA 120.

NRS 295.009(1)(b) requires the Petition to “[s]et forth, in not more than 200 words, a description of the effect of the initiative...if the initiative...is approved by the voters.” The description-of-effect

requirement “is significant as a tool to help prevent voter confusion and promote informed decisions.” *Las Vegas Taxpayer Accountability Cmte. v. City Council of City of Las Vegas*, 125 Nev. 165, 177, 208 P.3d 429, 437 (2009) (citation omitted). The description of effect is critical to the initiative process, because it “is what the voters see when deciding to sign a petition, and...[it] must accurately inform petition signers of the nature and effect of that which is proposed.” *No Solar Tax PAC v. Citizens for Solar and Energy Fairness*, 132 Nev. 1012, 2016 WL 4182739 (Aug. 4, 2016) (unpublished disposition) (citations omitted), at \*1.

To assess a description of effect’s sufficiency, this Court determines whether it “contains a straightforward, succinct, nonargumentative statement of what the initiative will accomplish and how it will achieve those goals.” *Educ. Initiative PAC*, 129 Nev. at 38, 293 P.3d at 876. This does not mean (and DailyPay does not argue), that the description of effect “must highlight every nuance and effect of an initiative[.]” *Id.* at 47, 293 P.3d at 882. But it does mean that this Court should take a “holistic approach to determine...whether the information contained in the description is correct and does not misrepresent what the initiative will accomplish and how it intends to achieve those goals.” *Id.* at 48, 293 P.3d at 883. “[A] description of effect’s failure to address [its] substantial



impact[s] is a material omission.” *Education Freedom PAC v. Reid*, 138 Nev. Adv. Op. 47, 512 P.3d 296, 304 (2022).

A description of effect must also “alert voters to the breadth and range of effects that the initiative will have” and describe its impact “on existing policies and laws[.]” *Prevent Sanctuary Cities v. Haley*, 134 Nev. 998, 421 P.3d 281 (unpublished disposition) (May 16, 2018), at \*4. *In Prevent Sanctuary Cities*, this Court held that “the title and the description of effect must be sufficient to allow the voter who is asked to sign to have the initiative placed on the ballot to understand the initiative being proposed and its effect if adopted.” *Id.*, at \*5. The Court held that “the potentially misleading title, combined with the initiative’s generality and the deficient description of effect, d[id] not accomplish that end.” *Id.*

Here, much like the description in *Prevent Sanctuary Cities*, the Petition’s description of effect doesn’t even attempt to explain its substantial impacts on existing law and policy, particularly its impacts on NRS Chapter 604D, despite using barely half of the statutorily permitted words to describe the Petition’s sweeping effects. The description leaves much unsaid, but cannot blame NRS 295.009’s 200-word limit for its silence.

One of the principal recurring concerns with description-of-effect challenges is that NRS 295.009(1)(b)'s 200-word limit does not allow the description to address every conceivable effect the measure might have. *See, e.g., Helton*, 138 Nev. at 489, 512 P.3d 309. But that concern is not triggered here, with a description of effect that uses only 113 of 200 words, a description that makes no attempt to disclose or explain its substantial changes to existing law. The description of effect's longest paragraph consists of a mere 52 words. I AA 131. Without running afoul of NRS 295.009's word limit, the description could easily be amended to discuss its proposed changes regarding earned wage access services, changes which will affect hundreds of Nevada employers and tens of thousands of Nevada workers who utilize earned wage access services.

Aside from its silence concerning material changes to SB 290, the information that is contained in the description is neither correct, nor does it accurately represent to voters what the Petition will accomplish and how it will achieve those goals. For example, the description states it applies only to "high-interest lending practices," I AA 131, but it also applies to earned wage access services that, by law, are not lending practices and "shall not...charge a late fee, deferral fee, interest or other penalty[.]" NRS 604D.410(1)(c). The description of effect states it applies

only to various “loans” including “loan types dependent on future earnings and income,” I AA 131, but its definition of “loan” also applies to transactions involving wages a worker has ***already earned***, specifically, “unpaid wages...whether earned, to be earned, or contingent upon future earnings.” I AA 121.

The Petition’s restrictions are not limited to “high-interest lending practices,” as they would also penalize other transactions **regardless** of whether interest, late charges, or other payments are required at all. *Id.* The Petition reaches transactions even if the borrower faces no recourse for non-payment. *Id.* So the Petition’s text restricts transactions that are neither “high-interest” nor “predatory” in any rational sense, despite the description of effect’s representations otherwise.

And, much like the description in *Prevent Sanctuary Cities*, the Petition’s description of effect here, combined with its confusing and misleading title, fails to sufficiently apprise voters of the measure’s true impacts. Indeed, “the title, combined with...its unhelpful description of effect, is confusing and misleading to voters because the initiative’s language is broader than what would generally be considered to fall under” a measure dealing with so-called “predatory payday loans.” *Prevent Sanctuary Cities*, at \*4.

The description of effect fails to discuss material changes to existing law of which Nevada voters have the right to be informed. The description paints an incomplete picture, undermining “informed decision-making” at the critical signature-gathering phase of the initiative process. The incomplete description should be revised to disclose its material changes to NRS Chapter 604D’s earned wage access provisions.

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

The Petition would effectively repeal SB 290’s earned wage access classifications, now codified at NRS Chapter 604D. NRS 604D.190(1)(a). The Petition does not say so expressly, but “a subsequent statute, revising the whole subject-matter of a former one...although it contains no express words to that effect...operate[s] to repeal the former.” *State v. Rogers*, 10 Nev. 319, 322 (1875). “[I]t is ordinarily presumed that the legislature, by deleting an express portion of a law, intended a substantial change in the law.” *McKay v. Bd. of Supervisors of Carson City*, 102 Nev. 644, 650, 730 P.2d 438, 443 (1986). The Petition must include the full text of the law it seeks to change.

The Constitution is clear that a ballot proposal to repeal or revise existing law “shall include the full text of the measure proposed.” Nev. Const. Art. 19, Sec. 3(1). Further, “**no law** shall be revised or amended by

reference to its title only; but, in such case, the act as revised or section as amended, ***shall be re-enacted and published at length.***” Nev. Const. Art. 4, Sec. 17 (emphases added). For purposes of the “full-text” rule, it makes no difference that the Petition seeks to change existing law via popular initiative, “because the people’s initiative power is legislative in nature,” and “that power is subject to the same limitations placed on each Legislature.” *Educ. Freedom PAC*, 138 Nev. Adv. Op. 47, 512 P.3d at 305.

This Court recently invalidated a petition on “full-text” grounds, emphasizing that “[t]he requirement that each signer be given the opportunity to review a measure’s full text serves the purpose of ensuring that signers know what they are supporting.” *Schools Over Stadiums v. Thompson*, Case No. 87613 (Nev. Sup. Ct. May 13, 2024) (unpublished disposition), at \*1 (citing *Las Vegas Conv. & Visitors Auth. v. Miller*, 124 Nev. 669, 686, 191 P.3d 1138, 1149 (2008)). In *Schools Over Stadiums*, the Court struck down a petition that failed to include the entirety of the legislation on which it sought a referendum, holding that “SB 1 must be included in the petition in its entirety to provide voters the complete context of the proposed measure so that they can understand what the law is now and what the law will be should they approve or disapprove” the measure. *Id.* (emphasis added).

Similarly, here the Petition seeks voter approval to substantially change existing law. Nevada’s earned wage access framework relies on the classification of earned wage access services as non-loan, non-credit products that provide access to what a worker has already earned. SB 290’s legislative sponsors explained that the bill’s definition of earned wage access services “is key to distinguishing [earned wage access] products from loans and other lending-related financial products and services.” *Hearing on SB 290*, Nev. Sen. Comm. and Labor Cmte. Mins, Testimony of Sen. Maj. Ldr. Nicole Cannizzaro (April 5, 2023) at 42; I AA 80-81. The Petition’s definition re-classification of earned wage access services as “loan” products will punish service providers and their employer partners as “predatory” lenders. I AA 121-122.

Nevada voters must have the opportunity to comparatively review the Petition’s changes with existing statutes the Petition asks voters to amend. The Petition must include the full text of the statute it seeks to change, so that a potential signatory has the chance to review the proposed measure in context.

## **CONCLUSION**

The Petition’s title and its description of effect mislead voters concerning the true impacts of the Petition on existing law, and

concerning the punitive impacts the Petition will effectuate on unsuspecting businesses and workers in Nevada. The Petition articulates a stated goal of preventing “predatory payday lending” but its component parts relating to earned wage access services and service providers are not functionally related to that stated goal.

The district court erred in concluding that the Petition satisfies NRS 295.009’s single-subject rule. The Petition’s 113-word description is incomplete and inadequate, and it should be revised to disclose the Petition’s material effects on existing laws. The Petition should be required to include the “full text” of the measure proposed, including the text of legislation the Petition seeks to amend. For any and all of the foregoing reasons, this Court should reverse the district court’s order and enjoin the Petition from advancing further.

DATED this 26th day of August 2024.

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## ATTORNEY'S CERTIFICATE OF COMPLIANCE

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

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains **6,122 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.

DATED this 26th day of August 2024.

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**CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(1)(b) and 25(1)(d), I, the undersigned, hereby certify that I electronically filed the foregoing **APPELLANT DAILYPAY'S OPENING BRIEF** with the Clerk of Court for the Supreme Court of Nevada by using the Supreme Court of Nevada's E-filing system on this 26th day of August, 2024.

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

  
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an employee of Holland & Hart, LLP