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IN THE FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR CARSON CITY

UBER SEXUAL ASSAULT SURVIVORS FOR LEGAL ACCOUNTABILITY and NEVADA JUSTICE ASSOCIATION,
Plaintiffs,

vs.

UBER TECHNOLOGIES, INC., a Delaware corporation; MATT GRIFFIN, JOHN GRIFFIN, SCOTT GILLES, and TIA WHITE, individuals; "NEVADANS FOR FAIR RECOVERY," a registered Nevada political action committee; and FRANCISCO AGUILAR, in his official capacity as Nevada Secretary of State,
Defendants.

Case No. 24-OC-0005618

Dept. No. 1

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION S-04-2024

Priority Matter Under NRS 295.061(1)

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INTRODUCTION

Through its "Nevadans for Fair Recovery" PAC, Uber proposes that Nevada adopt the most extreme limit on access to the civil justice system of any state: a 20% cap on contingency fees. Whatever its merits as a matter of policy, this proposal violates three legal requirements designed to safeguard the initiative process.

***First*,** an initiative may "[e]mbrace but one subject." NRS 295.009(1)(a). Initiatives can't claim to target a narrow, popular subject but sneak through sweeping, unpopular changes to a wide array of other areas. This initiative does just that. Presented as a way to rein in a "small number" of "billboard attorneys," it would in fact make it much harder for Nevadans of all stripes to obtain legal representation across a staggering range of subject areas—from survivors of sexual assault to inventors seeking to enforce their patents, from property owners in eminent-domain cases to police officers injured in the line of duty, from families of elder abuse victims to small businesses in antitrust disputes. By lumping all these subject areas together, the proposal does not give "sufficient notice" of these "interests likely to be affected by the proposed initiative." NRS 295.009(2).

The initiative also violates the single-subject rule in another way: Presented as simply changing the percentage of recovery that can go to fees, it conceals an effort to make a dramatic, complex change to how recovery itself is calculated. This would slash fees well below 20% of recovery under existing law, effectively reallocate plaintiffs' medical costs to their attorneys, and collide with Nevada's Rules of Professional Conduct by putting lawyers' financial interests into direct conflict with their clients' medical needs.

***Second*,** the petition must provide a description of effect, NRS 295.009(1)(b), that is neither "deceptive" nor "misleading." *Educ. Freedom PAC v. Reid*, 138 Nev. Adv. Op. 47, 512 P.3d 296, 304 (2022). The Supreme Court has rejected descriptions that—like this one—"fail[] to apprise voters" that the initiative will increase "the risk[] to the injured plaintiff" of "nonpayment" by the responsible party. *Jones v. Heller*, 120 Nev. 1256, No. 43940 at 2 (2004) (unpub.) (attached). The description here also fails to include *any* "summary of [the] initiative's purpose." *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 48 (2013). And the initiative's true purpose—making it harder for sexual-assault survivors and ordinary Nevadans to obtain legal representation and thus compensation—would be anathema to voters.

Crucially, proponents must also inform voters of "the substantial fiscal impact the proposed change would have on the state's budget." *Educ. Freedom*, 512 P.3d at 304. The record here includes expert declarations explaining that the proposed law would "have a profound and lasting impact on the State's Medicaid budget, as well as an impact on the Victims of Crime Program." Sasser-Norman Decl. ¶ 48; *see also* Compl. ¶¶ 102–25. The Supreme Court held that a prior initiative to limit contingent fees was deficient because the failure to disclose the "increased burden on the state Medicaid fund" deprived "the average taxpayer" of "information important in determining how to vote on this measure." *Jones*, No. 43940 at 2. So too here.

The description's legal flaws don't end there. It also does not "alert voters to the breadth and range of effects that the initiative will have." *Prevent Sanctuary Cities v. Haley*, 134 Nev. 998, 2018 WL 2272955, at *4 (2018). Nor does it disclose its displacement of the Judiciary's power to regulate attorneys, its dramatic change in how recovery is calculated, or the one-sided nature of the proposal.

***Third*,** the Nevada Constitution requires that an initiative include the "full text" of any laws that would be revised or amended. Nev. Const. art. 19, § 3(1). This initiative would (1) revise or amend existing statutes on contingency fees (NRS 7.095 and NRS 228.1116), (2) alter the formula for calculating recovery under existing law (NRS 7.095(3)), and (3) override the reasonableness framework set by the Nevada Supreme Court (Nev. R. Prof. Cond. 1.5)—all without giving voters a chance to see the full text of these changes.

In sum, this petition violates Nevada law and this Court should grant declaratory and injunctive relief.

BACKGROUND

Under a framework established by the Nevada Supreme Court and applied by judges on a case-by-case basis, the reasonableness of contingency fees is determined through a detailed analysis of factors like "time and labor required" and "novelty and difficulty" of the issues. Nev. R. Prof. Cond. 1.5. "Nevadans for Fair Recovery" filed a petition to change this, by making it unlawful for an attorney to "contract for or collect a fee contingent on the amount of recovery for representing a person seeking damages in a civil case in excess of twenty percent of the amount of recovery." App. Ex. 1 at 2. The description of effect reads as follows:

> If enacted, this initiative will limit the fees an attorney can charge and receive as a contingency fee in a civil case in Nevada to 20% of any amount or amounts recovered, beginning in 2027.

> In Nevada currently, most civil cases do not limit an attorney's contingent fee percentages, except that such fees must be reasonable. Current law does, however, limit attorney fees in medical malpractice cases to 35% of any recovery, and caps contingency fees for a private attorney contracted to represent the State of Nevada to 25% of the total amount recovered.

The proponents then began a media campaign to support the proposal. A press release disclosed that the initiative is "led by Uber" and informed Nevadans that its purpose is to "protect[] victims" and "reduce costs for Nevadans" by reining in a "small number" of "billboard attorneys." App. Ex. 2.

ARGUMENT

I. This excessively broad initiative violates the single-subject rule and does not provide Nevada voters with sufficient notice of the interests affected.

Nevada's "single-subject requirement" protects the will of the voters by "promoting informed decisions," "preventing the enactment of unpopular provisions by attaching them to more attractive proposals," and prohibiting an initiative from "concealing" unpopular provisions. *Las Vegas Taxpayer Accountability Comm. v. City Council of City of Las Vegas*, 125 Nev. 165, 176–77 (2009). Under this standard, the "parts of the proposed initiative" must "provide[] sufficient notice of the general subject of, and of the interests likely to be affected by, the proposed initiative." NRS 295.009(2). This requirement is violated if the initiative's purpose "fails to provide sufficient notice of the wide array of subjects addressed … or the interests likely to be affected by it." *Nevadans for Prop. Rts. v. Sec'y of State*, 122 Nev. 894, 909 (2006).

A. When determining the initiative's "purpose," courts "look[] to its textual language and the proponents' arguments." *Las Vegas Taxpayer*, 125 Nev. at 180. Here, the proponents' publicly described purpose is to rein in the "small number" of "billboard attorneys" who "have co-opted the court system at the expense of victims," in order to "protect plaintiffs' judgments" and "put victims first." App. Ex. 2. The initiative's text focuses on limiting fees as a percentage of compensation, its backer is named "Nevadans for Fair Recovery PAC," and the PAC's stated purpose is supporting "victim recovery." App. Ex. 1 at 1, 8.

Yet the initiative's actual scope—any "civil case" for "damages," App. Ex. 1 at 2— "is extremely broad" relative to any such purpose, *Nevadans for Prop. Rts.*, 122 Nev. at 908. Instead of covering a single subject, the initiative covers every kind of lawsuit on every conceivable subject in every kind of court. This would encompass "myriad other" areas "that do not fall even within the most broad definition" of any

supposed crisis of billboard attorneys and tort reform. *Id.* That includes patent disputes between businesses; qui tam suits for fraud on the state or federal government; antitrust litigation brought by Nevada small businesses against national monopolies; securities suits by pension funds; eminent domain; commercial real estate; probate; workers' compensation; contract cases between companies; retirement fund ERISA cases; bankruptcy cases; high-stakes mergers-and-acquisitions litigation; and so much more. Compl. ¶ 87(a)–(w).

People aren't born knowing this vast scope and variety of legal issues. Because all areas of civil law "are lumped into one initiative," "[v]oters, while favoring [fee caps] in general, may fail to distinguish between the varying impacts" on different kinds of claims. *Nevada Judges Ass'n v. Lau*, 112 Nev. 51, 60 (1996). Take the strong public interest in promoting innovation by allowing the inventor in her garage to defend her intellectual property against a massive company. Kritzer Decl. ¶ 32 n.26. Or the taxpayers' interest in policing fraud against state healthcare systems. Or property owners' interest in just compensation in eminent-domain cases. Voters lack "sufficient notice of th[is] wide array of subjects" and "the interests likely to be affected." *Nevadans for Prop. Rts*, 122 Nev. at 909. This is exactly what the single-subject rule is designed to prevent: a seemingly narrow purpose that smuggles in provisions that "far exceed[] the scope" of that limited purpose. *Id.*

Not only would the initiative regulate this vast range of subject areas, it would have serious effects on all of them. "[C]ontingency fees allow those who cannot afford an attorney who bills at an hourly rate to secure legal representation" and thus "allow a client without financial means to obtain legal access to the civil justice system." *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 559 (Nev. App. 2018). The complaint is accompanied by declarations from the world's leading academic experts on contingency fees, who explain that this initiative would dramatically limit ordinary Nevadans' ability to obtain representation and thus any compensation at all. Kritzer Decl. ¶¶ 4–6, 32–45; Fitzpatrick Decl. ¶¶ 5–9. This is borne out by dozens of Nevada attorneys, who describe how this initiative would hobble their ability to take cases across a sweeping range of subject areas. Compl. ¶¶ 72–81, 87 (summarizing declarations). Across all these subjects, Nevadans will lose access to the courts and competent legal representation of their choice—interests of fundamental importance to our citizens and our legal system. *See, e.g.*, *Miller v. Evans*, 108 Nev. 372, 374 (1992) (citing the

"fundamental constitutional right of access to the courts"); *Imperial Credit v. Eighth Jud. Dist. Ct.*, 130 Nev. 558, 562 (2014) (noting "the importance ascribed to a party's right to select the counsel of his or her choice").

Contrast this extreme breadth with other Nevada contingency-fee caps, which specify the types of cases covered, informing voters of the subjects and interests affected. For example, NRS 7.095 is not only limited to the discrete category of "an action for injury or death against a provider of health care based upon professional negligence," but also includes two paragraphs explaining what those terms mean. This initiative has nothing of the sort. It offers no definition of "a civil case," App. Ex. 1 at 2, even though this is "an exceptionally broad subject," *Las Vegas Taxpayer*, 125 Nev. at 179. Even trained lawyers struggle to understand what it covers. Mills Decl. ¶ 19; Watkins Decl. ¶ 23; Granda Decl. ¶ 5; Mosich Decl. ¶¶ 10–11. Ordinary voters can't be expected to do any better. A recent poll found that fully 45.9% of Nevadans do not understand that this initiative would apply to sexual-assault cases—the very kind of cases that Uber, facing hundreds of civil cases by survivors nationwide, is trying to suppress. Miller Decl. ¶ 10(e); Compl. ¶¶ 18–46. Another 38% of Nevadans didn't realize that elder-abuse cases would be covered. Miller Decl. ¶ 10(c). That is by design, because otherwise voters would understand the actual (and highly sympathetic) "interests likely to be affected." NRS 295.009(2). Uber wants to avoid that. So instead of pushing a proposal about sexual-assault cases—which would never pass—Uber frames its proposal as being about something else entirely. The single-subject rule serves to bar just that sort of logrolling.

B. The initiative also violates the single-subject rule in another way: It is presented as simply adjusting the *percentage* of recovery that can go to contingency fees, "concealing" an effort to make a "complex" change in the separate subject of how *recovery* itself is defined. *Las Vegas Taxpayer*, 125 Nev. at 177–78. Under the existing contingency-fee cap for medical-malpractice cases, "'recovered' means the net sum recovered by the plaintiff after deducting any disbursements or costs incurred in connection with the prosecution or settlement of the claim. Costs of medical care incurred by the plaintiff … are not deductible disbursements or costs." NRS 7.095(3). The initiative parrots the first sentence, yet entirely removes the second. App. Ex. 1 at 2. There is no explanation for this other than ensuring that contingency fees are only calculated after the plaintiff's

medical costs are fully deducted from the recovery. *See, e.g.*, *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 457 (2022) (citing the "well-settled canon[] of statutory interpretation" known as the "meaningful-variation canon").

This would work a sea change in the law. In many cases, it would slash attorneys' fees well below 20% of recovery under existing law. In most injury cases, recovery is anchored to the amount of medical bills. Watkins Decl. ¶ 27. So if those bills are subtracted before fees are calculated, the attorney wouldn't get 20% of anything close to the amount recovered, instead getting 20% of a vastly lower sum. If "the contingency fee is calculated after disbursement of medical expenses and costs, the vast majority of cases would result in little to no fee in the majority of cases brought by low-income Nevadans." Carter Decl. ¶ 16; *see also* Compl. ¶ 133.

This would create a senseless conflict of interest. Lawyers representing injured people seek to ensure that their clients receive the medical care they need. But, under this proposal, doing so would dramatically reduce the lawyer's own compensation. Under the Rules of Professional Conduct, it is "essential" to avoid a situation "when a client's interests are inconsistent with the lawyer's personal interests." *Matter of Discipline of Arabia*, 137 Nev. 568, 575 (2021). Worse still, the initiative would override a contingency-fee system that "align[s] the interests of lawyer and client." *Kirchoff v. Flynn*, 786 F.2d 320, 325 (7th Cir. 1986); *see also* Kritzer Decl. ¶ 34. Yet this change is buried in a seemingly anodyne definition section of an initiative focused elsewhere. In thinking they are merely voting on an adjustment to the percentage of contingency fees, Nevada voters should not be confused into approving a dramatic change that they will neither notice nor understand.

II. The description of effect misleads Nevada voters, who will not realize that the initiative cuts their access to courts while draining millions of dollars from Nevada Medicaid.

Nevada law also requires that a description of effect summarize "what the initiative is designed to achieve and how it intends to reach those goals." *Educ. Freedom*, 512 P.3d at 304 (citing NRS 295.009(1)(b)). "The importance of the description of effect cannot be minimized, as it is what the voters see when deciding whether to even sign a petition," and "it is imperative that signers understand the effects and ramifications of their signature." *Coal. for Nevada's Future v. RIP Com. Tax, Inc.*, 132 Nev. 956, 2016 WL 2842925, at *2, 4 (2016). This is judged not from the viewpoint of trained lawyers, but from the standpoint of whether "a casual reader will not understand." *Lau*, 112 Nev. at 59. The initiative's description flunks this test.

A. The description is misleading about the initiative's purpose and its effect.

The description of effect must "accurately describe" both "the [initiative's] purpose and the consequences." *No Solar Tax Pac v. Citizens For Solar & Energy Fairness*, 132 Nev. 1012, 2016 WL 4182739, at *2 (2016). But the description here fails to include any "summary of [the] initiative's purpose" at all, just a barebones description of its operation. *Educ. Initiative*, 293 P.3d at 883. The proponents fill in this gap, claiming that the purpose is helping victims obtain more compensation. App. Ex. 2. But as explained above, the initiative would actually make it far harder for ordinary Nevadans to obtain competent counsel and thus any compensation at all. *See supra* 4–5.

This points to another serious problem. The Supreme Court has held that a description is misleading if it "fails to apprise voters" that, as a practical matter, the initiative will increase "the risk[] to the injured plaintiff" of "nonpayment" by the responsible party. *Jones*, No. 43940 at 2 & n.2. Here, because contingency fees are the "key to the courthouse" for regular people, the initiative would "*decrease* victims' ability to recover for their injuries and violations of their rights because it would make it significantly harder for them to obtain competent representation." Kritzer Decl. ¶¶ 4, 33–34. Thus, "many victims will recover nothing at all as a result of the proposal." Fitzpatrick Decl. ¶ 5. The description makes no mention of this.

B. The description fails to inform voters about the initiative's significant fiscal impact.

Nor is that the only significant consequence the description conceals. The Supreme Court has repeatedly rejected descriptions that fail to inform voters about "the substantial fiscal impact [a] proposed change would have on the state's budget." *Educ. Freedom PAC*, 512 P.3d at 304; *see also Coal. for Nevada's Future*, 2016 WL 2842925, at *4; *Jones*, No. 43940 at 2. Indeed, the Supreme Court held that a prior initiative to reduce contingency fees failed to alert voters that it would harm "third parties, such as Medicaid, private insurance, or workers' compensation" by making it harder to "recover expenses" that these programs had paid out to injured Nevadans. *Jones*, No. 43940 at 2. Failing to describe this "increased burden on the state Medicaid fund, which consists of taxpayer dollars," withheld "information important in determining how to vote on this measure." *Id.*

Here too, a casual reader has no way to know that this initiative would deprive Nevada Medicaid of millions of dollars in reimbursements that the program cannot spare. *See* Compl. ¶¶ 102–29. As experts on the state healthcare system explain, if ordinary Nevadans can't sue companies like Uber for their injuries, Nevada Medicaid ends up footing the bill. *See* Sasser-Norman Decl. ¶ 30. When someone receives healthcare through Medicaid, Medicaid is reimbursed from any ultimate recovery in a civil suit. *Id.* ¶¶ 18–28. That is a significant source of money for the program; when accounting for various types of reimbursement to Medicaid programs, the amount is likely "around $19 million" per year. *Id.* ¶ 35. And that doesn't include medical bills paid to hospitals out of recoveries in lawsuits that would instead end up billed to Medicaid. *Id.* ¶ 36.

"Given the increased pressures on Nevada Medicaid and the growing population that it serves, even a loss of several hundred thousand dollars—much less millions of dollars—would have a dramatic and profound effect." *Id.* ¶ 38. The initiative would also deprive the Children's Health Insurance Program and the Victims of Crime Program of significant reimbursements, and legal aid providers would be overwhelmed by cases that private attorneys would no longer be able to take. *Id.* ¶¶ 9–10, 13 (legal aid providers); *see also* Compl. ¶¶120–25 (CHIP and Victims of Crime Program); Mills Decl. ¶ 13 (Nevada Attorney for Injured Workers). Nothing warns voters about these serious consequences for the state's budget and programs that help the most vulnerable. To wit, after being presented with the description of effect, 47.5% of Nevadans wrongly thought that the initiative "would *save* the State of Nevada money." Miller Decl. ¶ 10(f) (emphasis added).

C. The description misleads voters about the initiative's true scope.

A description of effect must also "alert voters to the breadth and range of effects that the initiative will have"—in other words, the true scope of the initiative's reach. *Prevent Sanctuary Cities*, 2018 WL 2272955, at *4. As explained above, many regular Nevadans won't realize the staggering breadth of the subject areas covered by this initiative, but will instead understand it to cover only personal injury or products liability cases. *See supra* 3–5. A description can't be adequate if, after hearing it, nearly half of Nevadans didn't understand that sexual-assault cases would be covered. Miller Decl. ¶ 10(e); McCann Decl. ¶¶ 15-18. "What is particularly troubling is that people were least likely to understand that sexual assault cases were covered—even though

Uber, the company leading this initiative, is seeking to suppress exactly those kinds of claims." McCann Decl. ¶ 18. Nor will Nevadans understand that the initiative extends to areas like patent, eminent domain, antitrust, fraud against the government, and so many others, each with their own sets of interests and concerns.

This breadth is particularly problematic because "the initiative would limit the power" of a branch of the state's government to fulfill its duly appointed role. *Prevent Sanctuary Cities*, 134 Nev. 998, 2018 WL 2272955, at *4. In *Prevent Sanctuary Cities*, the description failed to inform voters that the initiative "would limit the power of local governments to address matters of local concern." *Id.* Here, the initiative would "imping[e] on [the Judiciary's] ability" to evaluate the reasonableness of contingency fees, *id.*—under the analysis the Nevada Supreme Court established requiring a carefully balanced, case-specific analysis of the time, expense, and risk involved. In doing so, it would displace "rulemaking decisions" of the "governmental body with that authority—the courts." *Nevadans for Prop. Rights*, 141 P.3d at 1249; *see* NRS 2.120(1). In other states, the constitutional separation of powers forbids such a displacement of judicial authority. *See Citizens Coal. for Tort Reform v. McAlpine*, 810 P.2d 162 (Alaska 1991) (holding that a proposed ballot initiative to limit attorneys' contingency fees was impermissible because it was a matter for the judiciary alone). At the very least, Nevada law requires that such an important shift in the balance of power must be mentioned in the description.

Nor is this the only way the description conceals the initiative's true scope. As explained above, the initiative appears to attempt to dramatically redefine how recovery itself is calculated. *See supra* 5–6. But the description doesn't mention *anything* about a change in how recovery is measured. Making matters worse, the description compares the initiative to existing caps, such as the "limit [on] attorney fees in medical-malpractice cases to 35% of any recovery." App. Ex. 1 at 3. This actively misleads readers into thinking that these are an apples-to-apples comparison and that the initiative is merely lowering the percentage. No wonder that the vast majority of Nevadans had no idea attorneys would be paid less than 20% of recovery. Miller Decl. ¶ 4.

D. The description conceals the measure's one-sidedness.

The description of effect does not disclose the proposal's one-sided nature. While the proposed law is limited to a "person seeking damages in a civil case" and a "plaintiff or plaintiffs," App. Ex. 1 at 1, the

description of effect merely informs voters that "this initiative will limit the fees an attorney can charge and receive as a contingency fee in a civil case in Nevada," *id.* at 2. But many defendants are in fact represented on contingency in civil cases, and there will be no limit on how much they can pay their lawyers. Hinkle Decl. ¶ 13. When voters are "deciding whether to even sign a petition," they should be informed that it would tie the hands of one side in civil litigation but not the other. *Coal. for Nevada's Future*, 2016 WL 2842925 at *2.

III. The initiative fails to include the full text of the initiative and statutes it is amending.

Finally, the initiative violates the constitutional requirement that "[e]ach … initiative petition shall include the full text of the measure proposed." Nev. Const. art. 19, § 3(1); *see also* NRS 295.0575(6) (same). Under the Nevada Constitution, "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, § 17. The full text requirement "serves the purpose of ensuring that signers know what they are supporting." *Las Vegas Convention & Visitors Auth. v. Miller*, 124 Nev. 669, 686 (2008).

But here, the initiative would revise or amend existing statutes relating to contingency fees, yet fails entirely to include the text of those statutes so that Nevadans can understand what they are changing. *See* NRS 7.095; NRS 228.1116. Further, the initiative also attempts to alter the *formula* for calculating recovery under NRS 7.095(3), but voters won't be able to see that change without comparing the text of the two statutes. And finally, the initiative would displace the carefully calibrated system that the Nevada Supreme Court established for determining whether contingency fees are reasonable, Nev. R. Prof. Cond. 1.5., once again doing so without providing that provision's text to voters. This violates the Nevada Constitution.[1]

CONCLUSION

This Court should strike the petition and enjoin the defendants from proceeding with the petition.

[1] As the caption of the complaint accurately reflects, the Nevada Secretary of State is sued here only in his official capacity.

AFFIRMATION

The undersigned hereby affirms that this document does not contain the social security number of any person and acknowledges that when any additional document is filed, an affirmation will be provided only if the document does contain personal information.

Respectfully submitted,

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