

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

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

Appellants,

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 V. AGUILAR, in his  
official capacity as Nevada Secretary  
of State,

Respondents.

No. 88813

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**BRIEF OF AMICI CONSUMER ACTION,  
CONSUMER FEDERATION OF AMERICA, AND  
NATIONAL ASSOCIATION OF CONSUMER ADVOCATES  
*(In Support of Appellants)***

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## **NRAP 26.1 CORPORATE DISCLOSURE STATEMENT**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

Amici Curiae Consumer Action, Consumer Federation of America, and National Association of Consumer Advocates are nonprofit, non-stock organizations. They have no parent corporations, and no publicly held corporations have an ownership interest in them. These Amici are represented by Claggett & Sykes Law Firm.

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No other law firms have appeared for these Amici in this case or are expected to appear for these Amici in this Court.

DATED this 22nd day of July 2024.

CLAGGETT & SYKES LAW FIRM

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## INTERESTS OF AMICI CURIAE

This brief is filed on behalf of three national nonprofit consumer-advocacy organizations, all of which are concerned about the profound and devastating effects that Uber's deceptive initiative campaign, if it is allowed to proceed, would have for the ability of low-income consumers to access the civil justice system and enforce consumer protections that are guaranteed by law.

**Consumer Action**, a non-profit 501(c)(3) organization founded in 1971, focuses on consumer education, community outreach, and issue-focused advocacy that empowers low-to-moderate-income and limited-English-speaking consumers to assert their rights in the marketplace and prosper financially.

**Consumer Federation of America (CFA)** is an association of 250 national, state, and local consumer groups that was founded in 1968 to advance the consumer interest through research, advocacy, and education. For over 50 years, CFA has been at the forefront of ensuring that our marketplace is fair and safe through advancing the consumer interest across a broad portfolio of issues including financial services, banking, credit, investor protections, privacy, housing, insurance, and

saving. As an advocacy organization, CFA works to advance pro-consumer policies on a variety of issues before Congress, the White House, federal and state regulatory agencies, state legislatures, and the courts.

**National Association of Consumer Advocates** is a non-profit corporation whose members are private and public sector attorneys, legal services attorneys, and law professors and students whose primary practice or area of study involves the protection and representation of consumers. NACA's mission is to promote justice for all consumers by maintaining a forum for information sharing among consumer advocates across the country and to serve as a voice for its members and consumers in the ongoing struggle to curb unfair and oppressive business practices.

## **INTRODUCTION**

The appellants' opening brief persuasively explains why Uber's initiative campaign, including its required description of effect, will mislead voters about this initiative's drastic consequences for ordinary Nevadans and for the State itself. AOB, at 28. The opening brief further explains that voters will mistakenly understand the initiative as

applying to a limited subject area, rather than every conceivable subject area of civil law. AOB, at 47.

This amicus brief, by three national consumer-advocacy organizations, highlights the weighty consequences of this case for just one of those many areas of civil law: consumer protection. Uber’s PAC, known as “Nevadans for Fair Recovery,” is informing Nevada voters that its initiative will “help ensure [that] more money goes to plaintiffs and victims.”<sup>1</sup> But just the opposite is true, especially in consumer-protection cases: This initiative, if enacted, would make it much harder for Nevada consumers to secure legal representation and obtain monetary relief from predatory lenders, debt collectors, scam artists, and other unscrupulous actors in the marketplace. That is because virtually all consumer-protection litigation is prosecuted on a contingent-fee basis. Even in cases with statutory fee-shifting, the proposed initiative would operate to eliminate the financial viability of consumer litigation. And it will also have undisclosed consequences for Nevadans’ ability to participate in and benefit from statewide or nationwide consumer class actions. It is not

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<sup>1</sup> <https://nevadansforfairrecovery.com/> (last visited, July 19, 2024).

exaggeration to say this initiative would wreck the state's civil justice system.

These consequences would not be some accident or incidental effect of the proposal. The real-world effect of this initiative should be disclosed to voters and consumers before they sign away their hard-won legal rights. Uber knows that its proposal will prevent consumers from getting lawyers and suing companies like Uber. That's exactly why Uber is championing this initiative right now, at a time when the company faces a tsunami of legal claims by its customers over sexual assaults.

Nothing prevents Uber from spending millions of dollars to influence Nevada voters and attempt to sidestep the State's legislature and advocate for the laws Uber would prefer. That is Uber's First Amendment right. But Uber does not have a right to deceive and confuse Nevada's voters. This Court should exercise its appropriate role to prevent such obvious deception.

This brief offers three simple and interrelated points about the consumer-protection implications of Uber's initiative: First, it is, by any measure deceptive, and this Court should not permit such deception. Second, the initiative would harm Nevada consumers in particular by

making it difficult or impossible to pursue contingent-fee litigation for consumers. Third, it is a wholesale attack on Nevada’s civil justice system—a consequence that is not disclosed to voters.

## ARGUMENT

A description of the effect “must be a straightforward, succinct, and nonargumentative summary of what the initiative is designed to achieve and how it intends to reach those goals.” *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 37, 293 P.3d 874, 876 (2013). Also, the description of the effect must “not be deceptive or misleading.” *Id.* at 42, 293 P.3d at 879. By any measure, Uber’s initiative is misleading in multiple ways: It hides the main effects of the proposal, fails to disclose the serious fiscal effects of the proposal, tries to sneak through a major change in the allocation of costs in civil cases, and does not truthfully tell voters about the actual breadth and scope of the proposal. In the District Court, Uber didn’t challenge any of the evidence supporting appellants’ complaint. In deciding this appeal, this Court should therefore treat the facts as having been effectively conceded. 4 JA 548-59.

## A. UBER’S INITIATIVE IS DECEPTIVE.

Uber<sup>2</sup> claims that its initiative will bring four benefits to consumers:

(1) “Cap attorney contingency fees at 20% of all settlements and awards for civil cases.”

(2) “Ensure more money goes to plaintiffs and victims by guaranteeing they receive at least 80% of net settlements and awards.”

(3) “Not limit liability or the amount corporations or defendants must pay when they’re found to be in the wrong.” and

(4) “Offer relief to consumers who pay thousands per year in higher prices for everyday goods and services due to costly litigation.”

<https://nevadansforfairrecovery.com/#Facts>

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<sup>2</sup> Amici refer to the initiative as belonging to Uber because it is the sole contributor of a total of \$5,000,000 according to the Secretary of State records, of which this Court should take judicial notice. <https://www.nvsos.gov/SOSCandidateServices/AnonymousAccess/CEFDSearchUU/GroupDetails.aspx?o=7jyc68w2p0f5%252bdNBNf6i7w%253d%253d> See NRS 47.103; *Jory v. Bennight*, 91 Nev. 763, 542 P.2d 1400 (1975) (judicial notice of Secretary of State’s records permissible). Indeed, even the U.S. Chamber of Commerce has not taken a position on Uber’s proposal: <https://legalnewsline.com/stories/660309299-capping-contingency-fees-in-nevada-could-have-unintended-consequences>

These four promises leave the reader with the overall impression that large corporations, such as Uber, are willing to take responsibility for their improper actions and pay victims fair settlements. As demonstrated by the undisputed record, which Amici highlight in this brief, Uber's initiative prevents ordinary Nevadans from realistically hiring attorneys on a contingency fee basis, such that corporations and defendants will not be held responsible for their wrongs.

On another page within the same website, Uber identifies attorneys as the problem because they allegedly take too much in attorney fees and leave their clients with little money to pay medical bills or everyday expenses. Uber also relies upon a study from the U.S. Chamber of Commerce, which has taken no official position on the measure, to argue that rampant lawsuits have increased consumer goods and services, as well as auto insurance costs. [NVFairRecovery\\_FactSheet.pdf \(nevadansforfairrecovery.com\)](#) Yet Uber's initiative provides no citation to the U.S. Chamber of Commerce study and does not explain any mechanism that would actually lower prices for consumer goods.

Uber then reports that attorneys have spent approximately \$130 million in advertising during 2023, as well as \$4.5 million contributed to

Nevada political candidates and causes since 2017. *Id.* Uber does not report that it is the sole contributor of \$5,000,000 to this initiative or how much it has contributed to political candidates.

To solve the problem, Uber guarantees that plaintiffs and victims will recover 80% of court awards or settlements through a 20% cap on attorney fees, with no cap on liability against defendants and corporations. *Id.* Uber next promises that its initiative will provide for a reimbursement to attorneys for case costs, such as hiring experts and conducting independent investigations. *Id.*

In reality, however, Section 2(3) of Uber's initiative requires the attorneys to bear the case costs in calculating an attorney fee. 1 JA 66. Because of this fee structure, Professor Brian T. Fitzpatrick offered his un rebutted opinion that lawyers would be upside down financially and unable to take such cases, which would ultimately prevent Nevada victims and consumers from seeking any redress for harms committed against them. 1 JA 75.

## **B. UBER'S INITIATIVE WOULD HARM NEVADA CONSUMERS.**

While aiming to protect itself, Uber's initiative will greatly harm Nevada consumers. Nevada has a rich history of protecting its

consumers, particularly through NRS Chapter 598 (the Nevada Deceptive Trade Practices Act) and private rights of action for statutory fraud under NRS 41.600. But Uber’s initiative now threatens consumers from recovering attorney fees, especially when the attorney fees are treated as an element of damages, which would otherwise be recovered by the consumer directly. *See Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 427, 132 P.3d 1022, 1034 (2006) (construing NRS 40.655(1) to allow homeowners to recover attorney fees as an element of damages for construction defect claims); NRS 41.600(3)(b); *Von Ehrensmann v. Lee*, 98 Nev. 335, 337-38, 647 P.2d 377, 378-79 (1982) (“Where equitable relief is sought, an award of attorneys’ fees is proper if awarded as an item of damages.”). That is, Uber claims that its initiative is designed to “[o]ffer relief to consumers.” <https://nevadansforfairrecovery.com/#Facts> But Uber’s initiative would actually reduce or eliminate attorney fees owed directly to Nevada homeowners and consumers who are otherwise entitled to recover such attorney fees as damages for their claims.

For nationwide consumer class actions, Uber’s initiative would similarly harm Nevada consumers. If Nevada becomes an outlier because of this “extreme barrier on people’s ability to hire counsel,” Nevada

consumers would suffer by not being able to participate in such class actions to seek redress. 2 JA 226, ¶ 4. Even if Nevada consumers were permitted to participate in such nationwide consumer class actions, the presiding judicial officer would not be able to fairly divide the attorney fees in the common fund because of Uber's initiative. Nevada law currently allows judges to exercise their discretion to increase attorney fees to amounts that are freely negotiated in the legal marketplace for comparable litigation. *See, e.g., Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864 n.99, 124 P.3d 530, 549 n.99 (2005). However, this judicial discretion would be eliminated under Uber's initiative, which would, of course, ultimately be borne by Nevada consumers because attorneys would not be incentivized to litigate complex cases for minimal or no pay, as Professor Fitzpatrick explained. 1 JA 75. The net result is that nationwide consumer class actions would simply exclude Nevada residents.

Consumer Attorney Michael Kind filed an unchallenged declaration supporting appellants' complaint. After reviewing several consumer protection statutes, Kind confirms,

It was the legislature's intent that these statutes will be enforced by private attorneys who may recover their

reasonable attorney's fees and costs. *E.g.*, *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012) (“The FDCPA is a consumer protection statute and was intended to permit, even encourage, attorneys like Lemberg to act as private attorney generals to pursue FDCPA claims.”); *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008) (To enforce the FDCPA, Congress chose “a private attorney general approach.”); *Tolentino v. Friedman*, 46 F.3d 645, 651 (7th Cir. 1995); *see also Graziano v. Harrison*, 950 F.2d 107, 113 (3d Cir. 1991) (noting that it was “Congress’s intent that the Act should be enforced by debtors acting as private attorneys general.”).

3 JA 364, ¶ 11.

Kind concludes that such consumer protection statutes “encourage private litigants to enforce the laws that protect the public from consumer protection violations.” *Id.* at 365, ¶ 13. Yet, if attorney fees are capped at 20%, “this initiative would seriously deprive Nevada consumers from access to justice and adequate representation.” *Id.*, ¶ 16. Kind reports that victims of deceptive trade practices are “often senior citizens, have low-income, or have a low level of education” with claims that are often under \$10,000 or as little as \$500. *Id.*, ¶¶ 14, 17. Thus, Uber’s initiative would be detrimental to Nevada’s consumers, including some of the most vulnerable members of our society.

The Nevada Court of Appeals determined that “contingency fees allow those who cannot afford an attorney who bills at an hourly rate to

secure legal representation.” *O’Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 559, 429 P.3d 664, 671 (Ct. App. 2018). To illustrate this point, Nevada Attorney Matt Sharp recalls only two clients in his contingency-fee-based practice since 1992 who could have paid his attorney fees on an hourly basis. 3 JA 431, ¶ 7. Sharp represents “individuals in complex civil actions including insurance bad faith cases, product liability cases, and trucking cases . . . [that] generally involve complex legal and factual issues that include multiple defendants and are litigated over years.” 3 JA 430, ¶ 3. These individuals are “typically working class, and they may have little or no economic loss but have suffered life-altering injuries.” 3 JA 430-31, ¶ 4. Since Uber’s initiative would both cap contingency fees at 20% and require attorneys to bear the case costs, Sharp describes this proposal as “economically unfeasible,” especially in his typical cases that proceed to trial or appeal and go on for years. 3 JA 431-33, ¶¶ 9-15. Ultimately, these individuals with “life-altering injuries” would not be able to seek justice under Uber’s initiative.

Therefore, Amici urge the Court to protect Nevada’s voters and consumers by preventing Uber’s deceptive initiative from proceeding any further.

### C. UBER’S INITIATIVE IS A WHOLESALe ATTACK ON NEVADA’S CIVIL JUSTICE SYSTEM.

Uber is no stranger to litigation. The record includes a detailed declaration by the co-lead counsel in the pending multidistrict litigation (MDL) against Uber in connection with its failure to protect its riders from sexual assault and sexual harassment. *In re: Uber Technologies, Inc., Passenger Sexual Assault Litigation* (MDL No. 3084), 3:23-md-03084-CRB (N.D. Cal.). 2 JA 246-57. Based upon their experience as co-lead counsel in the MDL, these attorneys report that contrary to Uber’s representations in its initiative, “Uber has consistently put survivors of sexual assault last.” 2 JA 256, ¶ 31. Their declaration outlines a more complete picture of the MDL, which is litigation “over Uber’s failure to implement appropriate safety precautions to protect passengers from sexual assault and sexual harassment.” Their declaration explains,

The plaintiffs in the MDL are former Uber passengers who were sexually assaulted or harassed by their Uber drivers. They bring various claims against Uber, including negligence, fraud and misrepresentation, vicarious liability, and product-liability claims. Currently, there are approximately 250 cases in the MDL, and that number is expected to significantly grow. The MDL is pending before the Honorable Charles R. Breyer of the U.S. District Court for the Northern District of California.

2 JA 246, ¶ 2.

From just this small sampling, it is clear that Uber has a litigation problem. However, instead of proposing legislation that actually addresses Uber's litigation problem, Uber's initiative casts a much wider net that is designed to disrupt and wreck Nevada's civil justice system for its own benefit.

Past tort-reform efforts in Nevada have been quite different—they have at least informed the voters what they are voting on. When the ballot materials for Keep Our Doctors in Nevada (KODIN) were ultimately presented to the voters following judicial testing, the materials reflected that the complaints were about medical-malpractice liability and presented them to the voters for an informed decision. <https://www.leg.state.nv.us/division/research/votenv/ballotquestions/2004.pdf>

In stark contrast, Uber's initiative claims to attack “billboard attorneys,” which according to its polling is a more popular way to reach its desired destination of eliminating litigation against it. Of course, if Nevada voters knew that Uber's initiative was designed to curtail litigation against it, this would be an unpopular position that voters would not accept. Thus, Uber's petition is a classic case of deception and

logrolling. See *Las Vegas Taxpayer Accountability v. City Council of Las Vegas*, 125 Nev. 165, 176, 208 P.3d 429, 437 (2009).

Just as in the instant case, Uber has previously presented an overbroad initiative petition seeking to relieve itself from its litigation problem, while casting an unnecessarily wide net. In *Koussa v. Attorney General of Massachusetts*, 188 N.E.3d 510, 516-17, 519 (Mass. 2022), Uber proposed an initiative to redefine its drivers as independent contractors, regardless of how they would have been classified under existing law. The court recognized that Uber’s petition was designed to prevent “potential lawsuits involving third parties, including apparently the victims of torts committed by app-based drivers, such as those assaulted by drivers or injured in traffic accidents.” *Id.* at 517. Ultimately, the court couched its decision to reject Uber’s initiative based on the single subject requirement. *Id.* at 520.

Similar to the analysis in *Koussa*, Amici urge this Court to consider the far-reaching effects of Uber’s initiative, if allowed to continue. Once again, the unrebutted evidence in the record supports stopping Uber’s attack on Nevada’s civil justice system, only to suit its own needs:

From Victoria Coolbaugh, the Executive Director of Nevada Justice

Association (NJA):

Contingency fees are the only way that survivors of sexual assault and sexual harassment are able to sue Uber for its repeated failures to take adequate steps to protect its passengers. That's why Uber is now taking aim at contingency fees: It wants to silence survivors by disabling them from finding legal representation. Until recently, Uber was blocking survivors from going to court and forcing them into confidential arbitration. But Congress recently made that tactic illegal. *See* 9 U.S.C § 402 (prohibiting "pre-dispute arbitration" for cases that "relate" to a "sexual assault dispute" or "sexual harassment dispute"). Now Uber faces hundreds of civil cases nationwide over its failure to protect passengers—including cases arising out of sexual assaults in Nevada. So, Uber has a new strategy for silencing survivors: Get rid of their lawyers.

2 JA 215, ¶ 4.

Likewise, Daniel Hinkle, the Senior Counsel for Policy and State

Affairs at the American Association for Justice (AAJ), reports:

If this initiative were to become law, Nevada would impose by far the most extreme barrier on people's ability to hire counsel of any state in the nation.

\* \* \*

Nevadans for Fair Recovery's initiative proposal and its description of its effect are highly misleading and deceptive. They disclose neither the true purpose nor the true effect of the proposal—indeed, they do not expressly identify any purpose at all. As evidenced by the name chosen by the proponents, the proposal is framed as one that would result

in “fair recovery” for victims. But the opposite is true: The initiative would drastically suppress civil claims of all types, leading many victims who would have been compensated for their losses to instead obtain no recovery at all. See Steven Garber, et al., *Do Noneconomic Damages Caps and Attorney Fee Limits Reduce Access to Justice for Victims of Medical Negligence?*, 6 J. Empirical Leg. St. 681, 650 (2009) (finding that attorney fee limits deter plaintiff lawyers from representing survivors even in cases of clear liability, potentially emboldening negligent, reckless, or willfully harmful behavior due to reduced legal deterrence). None of this is disclosed to the voter.

2 JA 226-27, ¶¶ 4, 7.

Further, Professor Herbert M. Kritzer provided his unrebutted opinion on Uber’s initiative and reached the following three conclusions:

(1) The proposed initiative would sharply reduce access to legal services in Nevada. 1 JA 93-94, ¶¶ 4-6;

(2) The proposed initiative would increase frivolous or otherwise non-meritorious litigation in Nevada. 1 JA 94-95, ¶¶ 7-8; and

(3) The proposed initiative would reduce reimbursements to the government and other insurers in Nevada. 1 JA 95-96, ¶¶ 9-10.

Professor Herbert M. Kritzer ultimately concludes,

In short, as this declaration will explain in detail, the proposed initiative will have the exact opposite effect as its proponents claim. And it will have several other significant deleterious effects that its proponents entirely ignore.

1 JA 96, ¶ 96.

Taken together, these several unrebutted declarations demonstrate that Uber's initiative is an attack on Nevada's civil justice system.

### CONCLUSION

Amici respectfully request that this Court reverse the order of the District Court.

DATED this 22nd day of July 2024.

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## CERTIFICATE OF COMPLIANCE

1. I hereby certify that this amici curiae brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the tpestyle requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Century Schoolbook 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 either:

proportionally spaced, has a typeface of 14 points or more and contains 3,381 words; or

does not exceed \_\_\_\_\_ pages.

3. Finally, I hereby certify that I have read this 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 22nd day of July 2024.

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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **BRIEF OF AMICI CONSUMER ACTION, CONSUMER FEDERATION OF AMERICA, AND NATIONAL ASSOCIATION OF CONSUMER ADVOCATES** (*In Support of Appellants*) with the Supreme Court of Nevada on the 22nd day of July 2024. I will electronically serve the foregoing document in accordance with the Master Service List as follows:

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