No. 88813

# In the Supreme Court of Nevada

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

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Elizabeth A. Brown
Clerk of Supreme Court

v.

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,
*Respondents.*

On Appeal from the First Judicial District Court,
Case No. 24-OC-000561B (The Honorable James T. Russell)

## APPELLANTS' REPLY BRIEF

ALEX VELTO (NBN 14961)
NATHAN RING (NBN 12078)
REESE RING VELTO PLLC
200 S. Virginia Street, Suite 655
Reno, NV 89501
(775) 446-8096
(775) 249-7864 (fax)
*alex@rrvlawyers.com*

*(additional counsel on signature page)*

DEEPAK GUPTA*
JONATHAN E. TAYLOR*
THOMAS SCOTT-RAILTON*
JESSICA GARLAND*
GUPTA WESSLER LLP
2001 K Street NW, Suite 850 North
Washington, DC 20006
(202) 888-1741
*deepak@guptawessler.com*

* admitted *pro hac vice*

August 21, 2024

*Counsel for Appellants*

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## INTRODUCTION

Uber's brief is notable more for what it does not say than for what it does. While Uber's initiative would have drastic consequences on multiple fronts—from changing the ways attorneys' fees and costs are calculated to depriving Nevada Medicaid of millions of dollars—the petition doesn't truthfully disclose any of these effects, and Uber is unable to provide any satisfactory explanation why.

*First*, start with NRS 295.009(1)(b)'s description-of-effect requirement. Uber admits that it doesn't know (or won't say) how its initiative's key feature—a 20% cap on fees—actually works. The initiative caps fees at "twenty percent of the amount of recovery." But it then defines recovery differently from existing law by subtracting medical costs before fees are calculated, which would set the cap far below 20%. Uber's description makes no mention of this. And, worse still, it misleadingly presents recovery under the initiative as the same thing as recovery under existing law.

Confronted with this, Uber's response is striking: It says it doesn't know whether recovery under its initiative is different from existing law, and because it doesn't know, it doesn't have to tell voters. This is no exaggeration. Uber acknowledges that the definition of recovery "is not predictable at this moment" and will only be known after the initiative goes through a future "process of judicial interpretation." Uber Br. 38. And Uber also admits that "[d]efining 'recovered' is integral to the central issue of contingency fees." Uber Br. 20 n.10. But if Uber can't

explain how the central calculation at the heart of its own initiative actually works, that is a fatal problem for the initiative, not a justification for evading the statutory obligation to describe its core effects. This fundamental flaw makes "the description of effect … deceptive and misleading." *Educ. Freedom PAC v. Reid*, 138 Nev. Adv. Op. 47, 512 P.3d 296, 304 (2022). And because that flaw cannot be cured (and because Uber waived any request to cure it regardless), that alone is sufficient for this Court to simply declare that the initiative is "void," without breaking any new legal ground or requiring any further litigation. *Id.*

Or take Uber's failure to inform voters about the "substantial fiscal impact … on the state's budget"—an effect that this Court has held must be disclosed. *Id*. The appellants submitted extensive and unrebutted evidence that the initiative would deprive Nevada Medicaid and other state programs of millions of dollars. Uber never challenged this evidence below or introduced evidence of its own. And contrary to Uber's contentions, this is not a matter of policy, it is a question of law.

The same goes for Uber's failure disclose that the initiative would dramatically limit ordinary Nevadans' access to counsel and courts, as unrebutted evidence showed (and as even Uber's *amici* admit). So too the description's failure to sufficiently inform voters of the initiative's sweeping scope—including its displacement of the carefully balanced Rules of Professional Conduct established by the Judiciary, shifting the balance of powers between branches of the government.

*Second*, Uber's admission that it can't say how recovery works under the initiative is also fatal for the single-subject requirement of NRS 295.009(1)(a). On the company's own acknowledgment, voters can't know whether they are approving of a single change to cap contingency fees as a percentage of recovery, or also a second dramatic change to the definition of recovery. And this second change is hardly "functionally related and germane" to capping contingency fees at 20%, since it would actually cap those fees at a far lower level. NRS 295.009(2).

The same is true for the unrebutted evidence that voters will think the initiative targets a narrow, popular subject (regulating "billboard attorneys"), when it sneaks through sweeping, unpopular changes to a wide array of other areas—from sexual-assault cases to patent disputes, each with their own distinct interests. That excessively broad scope does not give "sufficient notice" of the "interests likely to be affected by[] the proposed initiative." *Id.*

*Finally*, while the Nevada Constitution requires an initiative to include the full text of existing laws that would be amended, repealed, or nullified, Uber's initiative does not do so. That improperly leaves voters in the dark about the existing statutory framework the initiative would completely displace.

Accordingly, the appellants[1] request that this Court reverse the district court.

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[1] The appellants are two organizations, Uber Sexual Assault Survivors for Legal Accountability, a group of survivors of sexual assaults by Uber drivers and their advocates, and the Nevada Justice Association. Contrary to Uber's contentions

## ARGUMENT

### I. The description of effect misleadingly omits fundamental features of the initiative, including how it works, its effects, and its scope.

"The description of effect facilitates the constitutional right to meaningfully engage in the initiative process by helping to prevent voter confusion and promote informed decisions." *Educ. Freedom PAC*, 512 P.3d at 304.[2] "[A] description of effect must be straightforward, succinct, and nonargumentative, and it must not be deceptive or misleading." *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. 35, 42, 293 P.3d 874, 879 (2013). This Court takes 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, 883. To that end, this Court has identified "substantial impact[s]" that must be disclosed. *Educ. Freedom PAC*, 512 P.3d at 304. These include "the impact of [the initiative] on existing policies and laws," *Prevent Sanctuary Cities v. Haley,* No. 74966, 134 Nev. 998, 2018 WL 2272955, at *4 (May 16, 2018) (unpublished), and "the

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(at 1 n.1), Uber Sexual Assault Survivors for Legal Accountability is not an unregistered PAC. Instead, as the very website that Uber cites makes clear, the group is "a project of Empower Nevadans Now," an already existing entity. Uber Sexual Assault Survivors for Legal Accountability, https://perma.cc/2FPB-N3N8.

[2] Unless otherwise specified, internal quotation marks, citations, emphases, and alterations are omitted.

substantial fiscal impact [a] proposed change would have on the state's budget," *Educ. Freedom PAC*, 512 P.3d at 304.

The problem with Uber's description of effect is simple: It does not include those effects. It doesn't mention that the initiative would: (A) dramatically change the definition of recovery; (B) deprive Medicaid of millions of dollars; (C) severely limit Nevadans' access to counsel; and (D) alter the balance of separation of powers by displacing this Court's Rules of Professional Conduct.

To be clear, these are not mere policy disputes. The question is whether—as a matter of law—the description of effect fails to inform voters about the kinds of effects that this Court has consistently held must be disclosed. It is undisputed that the description doesn't disclose the effects listed above. A "description of effect's failure to address [a] substantial impact is a material omission." *Educ. Freedom PAC*, 512 P.3d at 304. And notwithstanding Uber's insistence that these effects can just be raised during the political process, "[t]he importance of the description of effect cannot be minimized, as it is what the voters see when deciding whether to even sign a petition." *Coal. for Nevada's Future v. RIP Com. Tax, Inc.*, No. 69501, 132 Nev. 956, 2016 WL 2842925, at *2 (May 11, 2016) (unpublished).

### A. The description of effect can't be sufficient when even Uber acknowledges that further litigation would be required to figure out how the initiative works.

The description of effect serves a vital purpose: Voters must know what they're supporting before they sign a petition. But the calculation at the heart of this initiative—a cap at 20% of recovery—depends entirely on the meaning of the term "recovery" that is not only left undefined in the description, but that Uber admits *cannot be known* at this juncture. Instead, according to Uber, the definition of recovery will require a post-election "process of judicial interpretation … that is not predictable at this moment." Uber Br. 38. In other words, not only does the description of effect fail to explain the fundamental variable in how fees will be calculated, Uber itself admits that it doesn't know how that formula works.

If the sponsor does not understand and cannot explain how its own initiative works, how can a voter make an informed decision about whether to sign the initiative petition? NRS 295.009(1)(b) simply does not permit a process in which the voters are required to pass the initiative to find out what it means. And the prospect of future protracted litigation and a court decision, all of which will occur years after the initiative is passed, can't possibly cure this problem.

**1.** The description of effect states that the 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." 1-JA-53. Uber admits (at 20 n.10) that

"[d]efining 'recovered' is integral to the central issue of contingency fees." Yet not only does the description fail to tell voters anything about what counts as an "amount … recovered," this wording is actively misleading.

As the appellants explained in their opening brief, Uber's initiative works a dramatic shift in the definition of recovery. Op Br. 23-25, 37-41. Under existing law on contingency fees, "'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," but "[c]osts of medical care incurred by the plaintiff … are not deductible disbursements or costs." NRS 7.095(1). Uber's initiative parrots the first part of that definition. 1-JA-52. But it entirely omits the limiting language stating that medical costs are not subtracted from the recovery before fees are calculated. 1-JA-52. Under basic principles of statutory interpretation, that means medical costs would be subtracted from the recovery before attorneys' fees are calculated. *See, e.g.*, *Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. 362, 369, 373 P.3d 66, 71 (2016) (when certain "costs" are included in one statute and not another, courts "must presume the Legislature did not intend for such costs to be included"). Even the district court acknowledged that the appellants "have made strong argument[s] as to the initiative having the effect of … changing the calculation of contingent fees by removal of medical expenses from the calculations thereof." 5-JA-762.

But if medical bills, which often anchor the amount of recovery, are subtracted before the contingency fee is calculated, the attorney wouldn't receive anything close to "20% of any amount or amounts recovered." 1-JA-52. Instead, the attorney would receive 20% of a far lower sum—meaning that the "vast majority of cases" involving medical costs "would result in little to no fee [when] brought by low-income Nevadans." Carter Decl. ¶ 16, 3-JA-300; *see also* Moss Decl. ¶ 8, 3-JA-422; Cameron Decl. ¶ 7, 3-JA-292-293; Watkins Decl. ¶ 27, 3-JA-461. Uber disputes none of this.

Yet the description completely omits any mention of this drastic change from existing law. In other words, "the impact of [the initiative] on existing policies and laws is not described." *Prevent Sanctuary Cities*, 134 Nev. 998, 2018 WL 2272955, at *4. Worse still, the description misleadingly compares the proposed "20% of any amount or amounts recovered" with the existing cap on "attorney fees in medical malpractice cases to 35% of any recovery"—even though recovery in those two laws is defined quite differently. 1-JA-53. That makes it appear to voters that this is an apples-to-apples comparison, when it is anything but.

Thus, the description is not just inadequate but actively misleading about the key element of this initiative—the 20% cap—because it doesn't tell voters 20% of *what*. Uber is asking this Court to put a percentage on the ballot with an undefined numerator, resulting in a formula that even Uber doesn't claim to understand. That

fails to inform voters of "what the initiative will accomplish and how it intends to achieve those goals." *Educ. Initiative PAC*, 129 Nev. at 48, 293 P.3d at 883.

**2.** Uber's only response to this is striking. One might expect a proponent to explain the meaning of this key term in the centerpiece of the initiative and then argue that the description of effect sufficiently informs voters of that meaning.

Not Uber. In this Court and in the district court, Uber's consistent position has been that the meaning of recovery "is not predictable at this moment," necessitating a post-election "process of judicial interpretation" ultimately landing in "this Court." Uber Br. 38; *see also* 4-JA-698-99 (arguing that the meaning of recovery must be decided by courts "years from now," after the initiative passes). Despite multiple opportunities, Uber has never explained why the language about medical costs from NRS 7.095(1) was omitted. Nor has Uber ever said—in court or in its description of effect—what it thinks the words that it drafted actually mean.

That is a "material omission" and it is "misleading." *Educ. Freedom PAC*, 512 P.3d at 304. Indeed, Uber insists that the "primary subject" of the initiative is to "limit the fees an attorney can charge and receive in a civil case in Nevada to 20% of *any amount or amounts recovered*." Uber Br. 15 (emphasis added).[3] But if that's the primary subject, then it is especially problematic for the description to be misleading

[3] Uber's insistence on this point belies its argument elsewhere that the deficiencies in its description of effect don't implicate "the primary goal of the Petition." Uber Br. 29.

as to what "recovered" means. If "[d]efining 'recovered' is integral to the central issue of contingency fees," Uber Br. 20 n.10, Uber cannot defer that definition to later, unspecified litigation, years after the initiative is passed. And while Uber relies heavily on the fact that the description of effect cannot be more than 200 words, in this case the company used only 94, meaning it had plenty of room left to offer an answer. 1-JA-53.

**3.** Accordingly, "[t]he description of effect is deceptive and misleading" and "these deficiencies render the initiative void." *Educ. Freedom PAC*, 512 P.3d at 304. This Court therefore could, and should, declare this initiative void, without any need for further litigation. Indeed, because it can do so without breaking new legal ground, it could even do so via an unpublished order.

Notably, Uber has not requested that this Court cure the description of effect under NRS 295.061(3)—and it clearly knows how to do so, having made this request to the district court below, 4-JA-731. Uber has abandoned that request on appeal. "Because [Uber] has not advanced [this] argument on appeal, it is waived." *SFR Invs. Pool 1, LLC v. U.S. Bank*, 135 Nev. 346, 352 n.4, 449 P.3d 461, 466 n.4 (2019).

And even if Uber hadn't waived this argument, the company's own position in this Court (at 38) is that the definition of recovery *in the initiative itself* is "not predictable," and nothing in the description of effect could fix that.

### B. The description doesn't tell voters that the initiative would deprive Nevada Medicaid of millions of dollars.

The description of effect is also misleading and inadequate because it fails to tell voters about the dramatic impact the initiative would have on Nevada Medicaid.

**1.** This Court's case law is clear: (1) If an initiative would have a "substantial fiscal impact … on the state's budget," then (2) that impact must be disclosed. *Educ. Freedom PAC*, 512 P.3d at 304; *see also RIP Com. Tax*, 132 Nev. 956, 2016 WL 2842925, at *4 (same). Given this, the flaw in Uber's initiative is so straightforward that it is basically a syllogism.

*First*, there is extensive unrebutted evidence that the initiative would cause "the loss of millions of dollars of funds for reimbursing Nevada Medicaid." Sasser-Norman Decl. ¶ 7, 1-JA-191; *see also* Kritzer Decl. ¶ 9, 1-JA-95. This Court has told challengers that they must provide "evidence regarding the expected costs" of the initiative, *Helton v. Nev. Voters First PAC*, 138 Nev. 483, 492, 512 P.3d 309, 318 (2022), and that is what the appellants did, through declarations from experts and dozens of practicing Nevada attorneys. *See* Sasser-Norman Decl. ¶¶ 7, 29-38, 1-JA-191, 200-03; *see also* Op. Br. 19 (compiling declarations). This evidence also showed how the initiative would harm the budgets of other state programs, including the Children's Health Insurance Program, the Victims of Crime Program, Nevada legal aid, and the Nevada Attorney for Injured Workers, all of which also provide crucial assistance

to the most vulnerable Nevadans. *See* Sasser-Norman Decl. ¶¶ 9-13, 40-47, 1-JA-95-96, 108-112; Mills Decl. ¶ 13, 3-JA-406-07.

Uber did not rebut or challenge the accuracy of any of this evidence below. It therefore "waived [any] evidentiary objections by failing to raise them during the proceedings below" and any attempt to dispute these facts. *Est. of Adams By & Through Adams v. Fallini*, 132 Nev. 814, 822 n.5, 386 P.3d 621, 626 n.5 (2016); *see also Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). There is accordingly nothing "speculative," Uber Br. 31, about unchallenged and extensive evidence stating without equivocation that "the initiative would cost the [Nevada Medicaid] program millions of dollars in reimbursements," Sasser-Norman Decl. ¶ 38, 1-JA-203.

*Second*, it is undisputed that the description of effect does not tell voters about this substantial fiscal impact.

*Therefore*, under this Court's precedent, "[t]he description of effect is deceptive and misleading about the substantial fiscal impact the proposed change would have on the state's budget." *Educ. Freedom PAC*, 512 P.3d at 304. Once again, this is not about whether such an impact makes an initiative bad policy. It is whether, as a matter of law, the description of effect discloses "the substantial fiscal impact the proposed change would have on the state's budget." *Id*. If such an impact is not disclosed, the description is "deceptive and misleading." *Id.* That's the case here.

**2.** Uber's responses to this evidence either ignore this Court's precedent or attempt to introduce evidence and raise factual arguments for the first time on appeal.

Uber begins by arguing (at 3 n.3) that it would violate Nevadans' constitutional right to the initiative process if an "initiative opponent could pile up declarations and then demand changes to (or the invalidation of) a measure or its description." But the Legislature expressly contemplated a process in which challengers may assemble an evidentiary record: An initiative is "challenged by filing a complaint," and "[a]ll affidavits and documents in support of the challenge must be filed with the complaint." NRS 295.061(1).

This Court has similarly admonished challengers that they cannot rely on "unsupported speculation" but must provide "evidence" of their asserted effects. *Helton*, 138 Nev. at 492, 512 P.3d at 318. This Court has similarly emphasized the importance of "factual findings" to determine "the true effect" of an initiative and whether a description of effect "fails to accurately identify the consequences." *Las Vegas Taxpayer Accountability Comm. v. City Council of City of Las Vegas*, 125 Nev. 165, 183-84, 208 P.3d 429, 441 (2009). To wit:

> Requiring the description of effect … to include effects based on factual findings made by the district court promotes our review of the description of effect under NRS 295.009(1)(b) and its purpose—to facilitate the people's right to *meaningfully* engage in the initiative process—by ensuring the people understand the measure they are being

> asked to support by signing a petition to have the initiative placed on the ballot.

*Prevent Sanctuary Cities*, 134 Nev. 998, 2018 WL 2272955, at *5. And these "factual findings made by the district court," *id.*, must, of course, be based on evidence.

Falling back, Uber belatedly challenges the experts' conclusion that the loss of "millions of dollars in reimbursements" "would have a dramatic and profound effect" on Nevada Medicaid, "[g]iven the increased pressures on Nevada Medicaid and the growing population that it serves." Sasser-Norman Decl. ¶ 38, 1-JA-203; *see also id.* ¶ 34, 1-JA-201-02. Uber suggests that a shortfall of millions of dollars is insignificant because the total budget of Nevada Medicaid is over a billion dollars. Uber Br. 33.[4]

Perhaps the loss of millions might not seem like much to a company like Uber. But if Uber wanted to argue that millions of dollars don't matter for a health program that is already being stretched thin and on which a third of the state relies, the company had every opportunity to present evidence to this effect below. But Uber never raised this argument below, much less presented any evidence to support it. It is therefore waived. *See Old Aztec*, 97 Nev. at 52, 623 P.2d at 983; *see also Helton*, 138 Nev.

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[4] Uber now claims without citation that "a much more certain effect" is that "more money … will go to victims." Uber Br. 37 n.12. The unrebutted evidence below directly addressed and rejected that claim. Kritzer Decl. ¶ 4, 1-JA-93-94.

at 492, 512 P.3d at 318 ("[T]his court's review is limited to the record made in and considered by the district court.").[5]

Even if Uber hadn't waived this argument, any administrator will tell you that a shortfall of millions of dollars is a serious problem, even for a large program. And because Nevada's Constitution requires a balanced budget, the loss of millions of dollars in one place will have "[t]he inevitable ramification of … either an increase in taxes or a reduction in … government services." *Educ. Freedom PAC*, 512 P.3d at 304; *see also* Sasser-Norman Decl. ¶ 45(c), 1-JA-205. That's precisely the kind of effect that this Court has held must be disclosed. *See Educ. Freedom PAC*, 512 P.3d at 304.

And as to Uber's claim (at 29) that this effect is unrelated to the "primary goal" of the initiative, this effect does not involve a one-off "hypothetical situation[]," such as when a challenger demanded disclosure about a hypothetical "prosecution … after a miscarriage." *Nevadans for Reprod. Freedom v. Washington*, 140 Nev. Adv. Op. 28, 546 P.3d 801, 808 (2024). The loss of Medicaid reimbursements is a major and direct consequence of the limit on contingency fees, the centerpiece of the initiative.

In sum, Uber made the strategic decision not to introduce any evidence of its own and not to challenge the appellants' evidence. It cannot now escape the consequences of that decision on appeal. And having failed entirely to address

[5] Perhaps illustrating the perils of raising factual disputes for the first time on appeal, Uber gets the math wrong. A million is not "1/100th of one percent" of a billion—or even of five billion. Uber Br. 33.

extensive evidence from experts and practicing attorneys about the initiative's effects on Medicaid, Uber cannot wave those effects away just by repeatedly calling them "speculative." Uber Br. 31, 32, 33.

### C. The description fails to inform voters that the initiative will make it dramatically harder for Nevadans to obtain counsel.

The same is true for the unrebutted evidence that the initiative will make it far more difficult for ordinary Nevadans to secure representation. The "description of effect's failure to address [a] substantial impact is a material omission." *Educ. Freedom PAC*, 512 P.3d at 304. A serious impediment to access to counsel and courts is just such an impact, and it is not disclosed anywhere.

Some of the world's foremost experts on contingency fees and dozens of practicing Nevada attorneys provided extensive evidence in the district court demonstrating that this initiative will "*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, 1-JA-93-94, 104-05; *see also* Op. Br. 13-16 (compiling declarations). That means "many victims will recover nothing at all as a result of the proposal." Fitzpatrick Decl. ¶ 5, 1-JA-74-75. Once again, Uber did not rebut or challenge the accuracy of any of this evidence below, waiving any opportunity to do so. *See, e.g.*, *Old Aztec*, 97 Nev. at 52, 623 P.2d at 983.

Closing the courthouse door on so many Nevadans certainly qualifies as a "substantial impact." *Educ. Freedom PAC*, 512 P.3d at 304. Not only that, but the description fails to "refer to the fact that the measure will affect only plaintiffs," which other state supreme courts have held is misleading. *Pelikan v. Myers*, 153 P.3d 117, 121 (Or. 2007) (striking a ballot initiative to cap contingent fees on this basis). The initiative is limited to attorneys for "plaintiffs," 1-JA-52, while the description of effect merely informs voters that it "will limit the fees *an attorney* can charge and receive as a contingency fee in a civil case in Nevada," 1-JA-53 (emphasis added).

Nor can Uber (at 29) simply ignore this significant effect by claiming that it is unrelated to the initiative's "primary goal." Nevadans' loss of access to counsel and courts flows directly from the cap on contingency fees, which is at the crux of the initiative. And even Uber's own *amici* admit that the purpose of the initiative is to stop Nevadans from bringing lawsuits. These *amici* explain that the initiative is a "tort reform" measure aimed at reducing the "disproportionate" number of "civil cases" in Nevada. *Amici Curiae* Br. of Nevada Trucking Ass'n at 2-3, 6. So not only does Uber hide the purpose and effects of its initiative, its own *amici* can't even defend the initiative without admitting that it's designed to reduce the ability of Nevadans to bring lawsuits—an unsurprising result for an initiative funded by Uber, which is a defendant in thousands of lawsuits. London Decl. ¶¶ 1-2, 2-JA-246.

### D. The description misleads voters about the initiative's true scope and effect on other laws, including rules promulgated by the Judiciary.

Uber's response is similarly lacking as to the description's failure to "alert voters to the breadth and range of effects that the initiative will have." *Prevent Sanctuary Cities*, 134 Nev. 998, 2018 WL 2272955, at *4. Uber never disputes that the description fails to tell voters that the initiative will displace the Judiciary's ability to regulate matters that have traditionally fallen within its purview. And Uber simply wishes away unrebutted evidence that many voters don't understand the sweeping scope of the initiative.

**1.** This Court has made clear that a description of effect must inform voters if "the initiative would limit the power" of a part of the state's government to fulfill its traditional role. *Id*. For example, in *Prevent Sanctuary Cities*, the description of effect was deficient because voters weren't told the initiative "would limit the power of local governments to address matters of local concern." *Id.*

So too here. In the exercise of its traditional role regulating the practice of law in Nevada, this Court has established a carefully balanced, case-specific analysis for contingency fees, according to which courts examine the time, expense, and risk involved. *See* N.R.P.C. 1.5. The initiative brushes aside that calibrated scheme in favor of a strict 20% across-the-board cap. That would "imping[e] on [the Judiciary's] ability" to regulate the legal profession. *Prevent Sanctuary Cities*, 134 Nev.

998, 2018 WL 2272955, at *4. Yet the description makes no mention of this. Other state high courts have held that such a shift would violate the separation of powers. *See Citizens Coal. for Tort Reform, Inc. v. McAlpine*, 810 P.2d 162, 165-66, 171 (Alaska 1991). Under Nevada law, at the very least, such a shift in the balance of power must be disclosed to the voters.

**2.** Uber also fails to engage with unrebutted evidence that voters don't understand the vast range of cases the initiative would cover, and accordingly that the description fails to "alert voters to the breadth and range of effects that the initiative will have." *Prevent Sanctuary Cities*, 134 Nev. 998, 2018 WL 2272955, at *4. Nearly half of Nevadans didn't realize that the initiative would sweep in sexual-assault cases, and approximately 40% didn't understand that class actions or elder-abuse cases would be covered. Miller Decl. ¶ 10(c), (d), (e), 1-JA-181. Instead, many Nevadans thought that the initiative only extends to cases like car accidents or personal injuries. Miller Decl. ¶ 10, 1-JA-180-181; McCann Decl. ¶ 18, 1-JA-149. Once again, Uber did not challenge or rebut this evidence below.

Uber's response to this evidence (at 19) is just to baldly assert that any "voter confusion" is "manufacture[d]"—even though these voters were provided with the full description of effect that Uber drafted, Miller Decl. ¶ 8, 1-JA-180. Uber also insists that it can rely on the term "civil cases," because even though the evidence shows many Nevadans won't understand it, "[e]veryone is presumed to know the law."

Uber Br. 18 & n.9. For this proposition, Uber relies entirely on a decision from over a hundred years ago involving a reward for a posse that hunted down a group of outlaws, not ballot initiatives. *Smith v. State*, 38 Nev. 477, 481, 151 P. 512, 512-13 (1915).

If this Court were to extend Uber's proposed principle to initiatives, a proponent could bury any effect in legal jargon that an ordinary person wouldn't understand. But a description of effect cannot rely on "complex" language that prevents voters from "comprehend[ing] the true effect of the initiative." *Taxpayers for Prot. of Nev. Jobs v. Arena Initiative Comm.*, Nos. 57157, 58350, 128 Nev. 939, 2012 WL 2345226, at *3 (June 19, 2012) (unpublished); *see also Nev. Judges Ass'n v. Lau*, 112 Nev. 51, 59, 910 P.2d 898, 903 (1996) (inquiry is whether "a casual reader will … understand" the initiative's scope). For example, the Supreme Court of Arkansas held that an initiative's use of the "technical term" "non-economic damages" without "a definition" improperly left the voter "in the position of guessing as to the effect his or her vote would have." *Wilson v. Martin*, 500 S.W.3d 160, 167 (Ark. 2016). The same is true with the undefined category of civil cases.

Not only are voters confused about the scope of the initiative, Uber itself appears to be in the same boat. According to Uber (at 18), a "civil case" is the same thing as a "civil action" under the Nevada Rules of Civil Procedure. But such an action "is commenced by filing a complaint with the court," N.R.C.P. 3, which would exclude administrative proceedings, such as the thousands of workers'

compensation cases in Nevada or social-security disability cases, Mills Decl. ¶ 19, 3-JA-408-09; Carter Decl. ¶ 24, 3-JA-303. Even though the appellants have pointed out this ambiguity throughout the litigation, *see, e.g.*, Op. Br. 23, Uber has never once said whether such cases are covered. And if Uber itself does not know, a voter cannot know either.

## II. This sweeping initiative violates the single-subject rule.

Uber's initiative also violates the single-subject rule. NRS 295.009(1)(a). Under this rule, the initiative's purpose 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). Uber's arguments for why its initiative complies with this requirement reflect the same inability to say what the initiative actually does or acknowledge its actual purpose.

### A. The initiative can't comply with the single-subject rule when Uber itself won't say whether the initiative works a separate, dramatic change in the definition of recovery.

Uber asserts (at 15) that "the initiative's primary subject" is to "limit the fees an attorney can charge and receive in a civil case in Nevada to 20% of any amount or amounts recovered." Yet as explained above, Uber's initiative separately seeks to redefine recovery in a manner that would set the actual cap far below "20% of any amount or amounts recovered." That violates the single-subject rule.

**1.** In the guise of an initiative that just reduces a percentage cap of contingency fees, the initiative attempts to sneak through a separate, significant change in the definition of recovery that Nevadans will neither notice nor understand. The single-subject rule prohibits such efforts to "conceal[]" a "complex" change in an initiative that voters will think is solely focused on another subject—namely, simply lowering the percentage cap on fees to 20%. *Las Vegas Taxpayer*, 125 Nev. at 176-77, 208 P.3d at 437. That's exactly what the "single-subject requirement" seeks to avoid. *Id.* As another state supreme court explained in rejecting one of Uber's initiatives, "[p]etitions that bury separate policy decisions in obscure language heighten concerns that voters will be confused, misled, and deprived of a meaningful choice" because "[v]oters are not only unable to separate one policy decision from another; they may not even be aware they are making the second, unrelated policy decision." *Koussa v. Att'y Gen. of Mass.*, 188 N.E.3d 510, 523 (Mass. 2022).

And this hidden second subject isn't "functionally related and germane" to the subject of capping fees at 20% of recovery. NRS 295.009(2). As Uber itself admits (at 14), in past cases this Court has only permitted multiple changes when "the effectiveness of one change would be limited without the other." *Feldman v. Aguilar*, No. 88526, 550 P.3d 344, 2024 WL 3083271, at *1 (Nev. 2024) (unpublished) (quoting *Helton,* 138 Nev. at 487, 512 P.3d at 315). But here, the change in the definition of

recovery directly undermines and contradicts the 20% cap, turning it into a far lower percentage. *See, e.g.*, Carter Decl. ¶ 16, 3-JA-300.

**2.** As above, Uber's main response is that the meaning of recovery in the initiative is "not predictable" until after a post-election "process of judicial interpretation." Uber Br. 38. That answer is no more convincing than before. Voters must know if they are supporting a single change in the percentage of contingency fees down to 20%, or an additional separate change in the definition of recovery that would set that cap far below 20%. Otherwise they cannot make an "informed decision[]." *Las Vegas Taxpayer*, 125 Nev. at 176-77, 208 P.3d at 437.

Uber's fallback is to argue that a change in the definition of recovery is not a separate subject, since "[d]efining 'recovered' is integral to the central issue of contingency fees." Uber Br. 20 n.10. But *changing* the definition of recovery under existing law—much less dramatically changing it—is certainly not integral to setting a cap on contingency fees at 20%. Indeed, these changes don't even "work together," *Feldman*, 550 P.3d 344, 2024 WL 3083271, at *1, since the second change subverts the alleged "primary subject" of the initiative of capping fees at 20% of recovery, Uber Br. 15. And even Uber admits that a second change is not permissible if it "undermine[s] []or contradict[s]" the primary change. Uber Br. 15.

### B. The initiative's excessively broad scope violates the single-subject rule by sweeping in every subject area of civil law.

Uber is similarly unconvincing in its effort to argue that the initiative's exceedingly broad scope complies with the single-subject rule. Unrebutted evidence shows that Nevadans *don't* understand the purpose of the initiative, its "general subject," or the "interests likely to be affected by [it]." NRS 295.009(2).

**1.** In determining an initiative's purpose, courts look not just to the initiative's "textual language" but to "proponents' arguments." *Las Vegas Taxpayer*, 125 Nev. at 180, 208 P.3d at 439. Here, however, the proponents "have not been entirely consistent" about the initiative's purpose. *Nevadans for the Prot. of Prop. Rts., Inc. v. Heller*, 122 Nev. 894, 907, 141 P.3d 1235, 1243 (2006). Uber offers a narrow goal to the public: cracking down on "billboard attorneys" specifically. 1-JA-62. Uber's allies offer a different goal: reducing the "disproportionate" number of "civil cases" in Nevada. *Amici Curiae* Br. of Nevada Trucking Ass'n at 5-12. And to the courts—but only to the courts—Uber hasn't given any purpose except limiting contingency fees in civil cases, without explaining what this limit is meant to accomplish or why it applies only to plaintiffs.

Faced with this thicket of potential purposes, the court's role is to determine whether a voter's understanding of the initiative's purpose will give "sufficient notice of the general subject of, and of the interests likely to be affected by, the proposed initiative." NRS 295.009(2). And here, unrebutted expert and survey evidence show

that many Nevadans think that the initiative applies only to the more limited subject (and the more limited interests affected by) car accident and personal injury cases. Miller Decl. ¶ 10, 1-JA-180-181; McCann Decl. ¶ 18, 1-JA-149.

That is not sufficient notice that the initiative would apply to the far broader subject of all civil cases—ranging from sexual assault to *qui tam* actions, from intellectual property to elder abuse, and from pension fund litigation to antitrust cases. Kritzer Decl. ¶ 32 & n.26, 1-JA-104; *see also* Compl. ¶ 87, 1-JA-25-26 (collecting sources). Nor is it close to sufficient notice of the interests affected, from the taxpayers' interest in policing fraud on public programs to the interests of survivors of sexual assault or elder abuse in nursing homes. *See* Kritzer Decl. ¶ 32 & n.26, 1-JA-104; *see also* Compl. ¶ 87, 1-JA-25-26. This problem is compounded by the fact that past caps on contingency fees have "exclusively applied" to limited subject areas, making it more likely that voters will be confused about the subject of the initiative if it "lumps … together" a broader range of subject areas. *Lau*, 112 Nev. at 58-60, 910 P.2d at 903-04.

**2.** In response, Uber's position (at 18 n.9) is again that the public is "presumed to know the law." But for the same reasons as above, that cannot be dispositive of the single-subject analysis. Otherwise, a proponent could simply bury multiple subjects in complex legal terminology that voters will not understand.

Uber (at 21) also puzzlingly asserts that "log-rolling has not occurred" because there is no "unpopular provision" that the initiative is trying to hide. But the initiative's application to a vast array of cases—from sexual assault to intellectual property—is precisely the unpopular element of the initiative that Uber is trying to conceal. Indeed, other state high courts have specifically recognized Uber's attempts to limit its liability as an example of an "unpopular" effect. *Clark v. Att'y Gen.*, 234 N.E.3d 953, 961 (Mass. 2024) (citing *Koussa*, 188 N.E.3d at 523). Uber can no more sneak through such an effect through an "excessively broad" subject than it could through multiple provisions. *Helton*, 138 Nev. at 487, 512 P.3d at 314.

## III. The initiative violates the full-text rule because it doesn't give voters the text of the laws being amended, repealed, or nullified.

As to the initiative's failure to comply with the Nevada Constitution's full-text rule, Uber's response once again runs into its own petition. 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. And because an "initiative petition shall include the full text of the measure proposed," Nev. Const. art. 19, § 3(1), the petition must therefore include the text of the laws being amended, repealed, or nullified.

According to Uber, however, it doesn't need to comply with this rule because the petition "mentions no other statutory provisions." Uber Br. 40. But Uber's description of effect expressly refers to other statutes, including the cap on

contingency fees in medical-malpractice cases in NRS 7.095 and in cases where the State is a client in NRS 228.1116. *See* 1-JA-53.

These are not just laws to which the initiative "may relate." Uber Br. 39. For example, the current medical-malpractice law caps contingency fees at 35% of recovery without subtracting medical bills. NRS 7.095. If such cases qualify as "civil cases," the initiative would obviously change that to a 20% cap based on a revised definition of recovery. And if medical-malpractice cases are somehow not "civil cases," then the scope of Uber's initiative is hopelessly unclear. The initiative would therefore amend, repeal, or nullify existing statutes—but without including their text. *See* Nev. Const. art. 4, § 17. That is particularly troubling here, as it is only by comparing the text of the initiative to the existing medical-malpractice cap that voters can see the differences in the definition of recovery. *See supra* 7.

So too for this Court's Rule of Professional Conduct 1.5, which currently provides a detailed, case-by-case framework for evaluating contingency fees. There as well, the voters are not provided with the text of this law so that they can see what they are changing before they sign the petition.

Uber claims there is no authority for this requirement, but it stems from the plain text of the Constitution itself. Nev. Const. art. 4, § 17; art. 19, § 3(1). This Court has also emphasized the importance of the full-text requirement in "ensuring that signers know what they are supporting." *Las Vegas Convention & Visitors Auth. v. Miller,*

124 Nev. 669, 686, 191 P.3d 1138, 1149 (2008). Uber tries arguing that in past cases (where a full text argument was not raised), the Court did not require inclusion of the full text of the laws being amended, repealed, or nullified. Uber Br. 39-40. But Uber cannot rely on cases where "the parties … did not raise the issue of whether the petition also complied with Section 3's full text requirement." *Schs. Over Stadiums v. Thompson*, No. 87613, 548 P.3d 775, 2024 WL 2138152, at *1 n.2 (Nev. 2024) (unpublished).

Finally, Uber argues (at 40) that effects on other laws will be addressed later in the process by the Secretary of State's digest, NRS 293.250(5). Yet the existence of the digest down the road doesn't negate similar requirements for petitions. For example, the description of effect must still include "the impact of [the initiative] on existing policies and laws." *Prevent Sanctuary Cities*, 134 Nev. 998, 2018 WL 2272955, at *4. There's no reason the full-text requirement would be any different. And in any event, this statute can't supplant the Constitution's full-text requirement.

## CONCLUSION

The district court's judgment should be reserved.

Respectfully submitted,

*/s/ Deepak Gupta*
DEEPAK GUPTA*
MATTHEW WESSLER*
JONATHAN E. TAYLOR*
THOMAS SCOTT-RAILTON* **
JESSICA GARLAND*
GUPTA WESSLER LLP
2001 K Street NW, Suite 850 North

Washington, DC 20006
(202) 888-1741
*deepak@guptawessler.com*

ALEX VELTO (NBN 14961)
NATHAN RING (NBN 12078)
REESE RING VELTO PLLC
200 S. Virginia Street, Suite 655
Reno, NV 89501
(775) 446-8096
(775) 249-7864 (fax)
*alex@rrvlawyers.com*

STEVEN M. SILVA (BNB 12492)
NOSSAMAN LLP
621 Capitol Mall, Suite 2500
Sacramento, CA 95814
(916) 442-8888
*ssilva@nossaman.com*

August 21, 2024

*Counsel for Appellants*

* Admitted *pro hac vice*

** Admitted in New York; practicing under direct supervision of members of the District of Columbia Bar under Rule 49(c)(8).

## CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type-style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word version 16.37 in 14-point Baskerville font.

2. I further certify that this brief complies with the 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 6,981 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, 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 if it does not, I may be subject to sanctions.

Dated: August 21, 2024

*/s/ Deepak Gupta*
Deepak Gupta

## CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that on August 21, 2024, I submitted the foregoing brief for filing via the Nevada Supreme Court's eFlex electronic filing system. Electronic notification will be sent to the following:


Bradley S. Schrager, Esq. (NBN 10217)
BRAVO SCHRAGER, LLP
6675 South Tenaya Way, Suite 200
Las Vegas, Nevada 89113
(702) 996-1724
*Bradley@bravoschrager.com*

Laena St-Jules, Esq. (NBN 15156)
ATTORNEY GENERAL'S OFFICE
100 N. Carson Street
Carson City, Nevada 89701
(775) 684-1265
*lstjules@ag.nv.gov*


/s/ *Deepak Gupta*
Deepak Gupta