No. 88813

In the Supreme Court of Nevada

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

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' OPENING BRIEF

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July 15, 2024

NRAP 26.1 DISCLOSURE

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 so that the judges of this Court may evaluate possible disqualification or recusal.

No publicly held corporation or parent corporation owns 10% or more of the stock of Uber Sexual Assault Survivors for Legal Accountability or the Nevada Justice Association. Gupta Wessler LLP, Reese Ring Velto PLLC, and Nossaman LLP are the only law firms that have appeared on behalf of Uber Sexual Assault Survivors for Legal Accountability and the Nevada Justice Association in this matter or are expected to appear in this Court.

Dated: July 15, 2024

/s/ Deepak Gupta
Deepak Gupta

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JURISDICTIONAL STATEMENT

This Court has jurisdiction under NRAP 3A(b)(1) because the district court issued a final judgment on May 15, 2024 and the notice of appeal was timely filed on June 7, 2024 under NRAP 4(a).

ROUTING STATEMENT

This case involves a ballot question is therefore presumptively retained by this Court under NRAP 17(a)(2).

STATEMENT OF THE ISSUES

1. Did the district court err in holding that the initiative petition's description of effect was not deceptive, misleading, or inadequate under NRS 295.009(1)(b)?

2. Did the district court err in holding that the initiative did not violate NRS 295.009(1)(a)'s single-subject rule?

3. Did the district court err in holding that the initiative petition did not violate the full-text rule of Article 19, section 3(1) of the Nevada Constitution?

STATEMENT OF THE CASE

Through its "Nevadans for Fair Recovery" PAC, Uber is pushing a ballot initiative that would impose the most extreme limit on access to the civil justice system of any state: a 20% cap on contingency fees. At a moment when the company faces thousands of sexual-assault claims, Uber's initiative would allow it to hire the best and most expensive attorneys, with no limits on *its* lawyers' fees, while placing unprecedented limits on ordinary Nevadans' ability to secure legal representation.

If Nevada voters knew what was really at stake with Uber's proposal, they would reject it out of hand. So Uber is trying what it has tried in other states, making it harder for people to take Uber to court through "voter confusion" and "obfuscation." *Koussa v. Att'y Gen. of Mass.*, 188 N.E.3d 510, 516-17, 519 (Mass. 2022) (striking an Uber initiative from the ballot). Uber has created a PAC with a misleading name, funded a misleading PR campaign, and even made misleading statements about which groups supported its proposal. Most strikingly, Uber claims that its initiative will "put victims first." But, as advocates for survivors put it, "Uber has consistently put survivors of sexual assault last." London Decl. ¶ 31, 2-JA-256.

Nevada law has safeguards against these kinds of efforts to deceive the electorate. And the Nevada Legislature has entrusted courts with the important responsibility of guarding against these anti-democratic tactics.

First, the petition must provide a description of effect that is neither "deceptive" nor "misleading." *Educ. Freedom PAC v. Reid*, 138 Nev. Adv. Op. 47, 512 P.3d 296, 304 (2022). The "failure to address [a] substantial impact is a material omission," *id.*, and a drastic restriction on the ability of Nevadans to access counsel and courts certainly qualifies. Indeed, this Court has held it was "misleading" to "fail[] to apprise voters" of an increase in "the risk, to the injured plaintiff, of a [responsible party's] nonpayment." *Jones v. Heller*, No. 43940, 120 Nev. 1256, at 2 (Sept. 18, 2004) (unpublished) (attached). The appellants presented unrebutted evidence from experts and lawyers across the State that Uber's 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, 1-JA-93-94. Accordingly, "many victims will recover nothing at all as a result of the proposal." Fitzpatrick Decl. ¶ 5, 1-JA-74-75.

Crucially, proponents must also inform voters of any "substantial fiscal impact the proposed change would have on the state's budget." *Educ. Freedom PAC*, 512 P.3d at 304. Unrebutted evidence from experts and practicing Nevada attorneys showed how Uber's initiative would "have a profound and lasting impact on the State's Medicaid budget." Sasser-Norman Decl. ¶ 48, 1-JA-206. If ordinary Nevadans can't sue companies like Uber for their injuries, Nevada Medicaid ends up footing the bill. When someone receives healthcare through Medicaid, Medicaid is reimbursed from

any ultimate recovery in a civil suit. This is a significant source of money; when accounting for various types of reimbursement to Medicaid programs, the amount is upward of $19 million a year. *Id.* ¶ 35, 1-JA-202. This Court previously held that a prior initiative 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. The "impact" of the initiative on "existing policies and laws is not described." *Prevent Sanctuary Cities v. Haley*, No. 74966, 134 Nev. 998, 2018 WL 2272955, at *4 (May 16, 2018) (unpublished). The description makes no mention of 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.

The description also 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. The initiative would make it much harder for Nevadans 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. Yet unrebutted evidence showed that many Nevadans have no idea such cases will be covered. This is particularly problematic since the initiative would displace the Judiciary's power to regulate attorneys.

Second, 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," the initiative actually extends to a staggering range of subject areas. 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. Uber claims that the initiative simply caps contingency fees as a percentage of recovery. But as noted above, Uber simultaneously tries to effect a complex change in the definition of recovery under which medical costs would be deducted before the percentage is calculated. This is not germane to capping fees at 20% of recovery, since in many cases it would set the cap far lower. Unrebutted evidence shows Nevadans will neither notice nor understand this change.

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, (2) alter the

formula for calculating recovery under existing law, and (3) override the reasonableness framework set by this Court—all without giving voters a chance to see the full text of these changes.

The district court recognized that the appellants had made a "strong" showing of harm to Nevadans' access to courts and counsel, harm to Nevada Medicaid, and a surreptitious change in the definition of recovery. 5-JA-748. That's unsurprising, since Uber failed to rebut any of this evidence. During the hearing, Uber even admitted that it could not explain how to interpret certain language in the initiative and that litigation and a court decision following its enactment would be necessary to settle its meaning. 4-JA-698-99. Yet the district court still did not strike the initiative.

The district court erred. This initiative is a textbook example of why the Nevada Constitution and the Legislature established critical safeguards to protect the People's right to direct democracy from being subverted by misleading initiatives. The Judiciary is entrusted with policing that line, and the problems with this initiative are the very kind that this Court has repeatedly identified as misleading and deceptive. This isn't the first time Uber has tried to circumvent a state's legislative process and sneak through misleading initiatives to stop its people from being able to sue the company. This Court shouldn't let Uber do in Nevada what it couldn't get away with elsewhere.

STATEMENT OF FACTS

A. The Uber-created "Nevadans for Fair Recovery PAC" launches this initiative and the appellants bring suit to challenge it.

On March 18, 2024, "Nevadans for Fair Recovery," a new political action committee created by Uber, filed a petition for a proposed initiative. 1-JA-51-52. The officers of the PAC are all lobbyists for Uber. 1-JA-59-60. The initiative would impose a 20% cap on plaintiffs' attorneys' fees by amending Title 1, Chapter 7 of the Nevada Revised Statutes as follows:

> Sec. 2. 1. For causes of action arising after January 1, 2027, an attorney shall not 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.
>
> 2. The limitation set forth in subsection 1 applies to all forms of recovery, including, without limitation, settlement, arbitration and judgment.
>
> 3. For the purposes of this section, "recovered" means the net sum recovered by the plaintiff or plaintiffs after deducting any disbursements or costs incurred in connection with the prosecution or settlement of the claim.

1-JA-52. The filing also includes a proposed "description of effect," 1-JA-53, which consists entirely of the following 94 words:

> 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.

Uber's lobbyists then launched a media campaign in support of the initiative. A press release set out the initiative's purpose: "[A] small number" of "billboard attorneys have co-opted the court system at the expense of victims and businesses," the press release warned, and the initiative was needed to "protect plaintiffs' judgments," "put victims first," "protect the people actually doing the work," and "reduce costs for Nevadans." 1-JA-62.[1] The initiative thus supposedly "protects victims, reduces paydays for some of the richest attorneys in the country, while helping reduce costs for Nevadans." *Id.*

The press release acknowledged that the initiative was "led by Uber," the point of contact was an Uber lobbyist, and the lead quote was from the "head of Government Affairs for Uber in Nevada." *Id.* And while the press release portrayed the initiative as having broad "support from business and workers alike," it cited only two groups that were not employed by Uber—one of which, the Retail Association of Nevada, then had to quickly clarify that this was done "without its permission and it 'will not be participating in this effort.'" Coolbaugh Decl. ¶ 9, 2-JA-216. A U.S. Chamber of Commerce publication has since reported that the initiative "is

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

supported by Uber but few business organizations, perhaps reflecting concern that such measures can end up doing more harm than good"—"[t]he U.S. Chamber hasn't weighed in for or against this ballot initiative."[2]

On April 8, the appellants—a group of survivors of sexual assaults by Uber drivers, along with their advocates, and the Nevada Justice Association—filed their complaint challenging the petition, accompanied by a three-volume appendix of supporting evidence. This evidence concerned the initiative's effects, including declarations by several experts and evidence concerning the initiative's main consequences in Nevada, as well as evidence of Nevada voters' understanding of the initiative's description of effect.

B. Uber's past efforts to prevent survivors of sexual assault and others from suing the company.

Uber did not draft this initiative on a blank slate. For years, Uber has tried to limit the ability of survivors of sexual assault and others to sue the company. Survivors were kept out of court through confidentiality clauses. London Decl. ¶ 25, 2-JA-255. Others were blocked from court through forced-arbitration clauses—a practice Uber abandoned only after significant public outcry. *Id.* ¶ 26, 2-JA-255.

Uber is now facing thousands of lawsuits by individuals who were sexually assaulted by its drivers, hundreds of which have been consolidated in a nationwide

[2] Daniel Fisher, *Capping contingency fees in Nevada could have unintended consequences*, Legal Newsline, (June 4, 2024), https://perma.cc/5Y2R-Z3RA.

multidistrict litigation (MDL). *Id.* ¶¶ 1-2, 2-JA-246. Many such cases involve sexual assault or harassment that took place in Nevada. Lansdown Decl. ¶¶ 2, 7-13, 2-JA-259-60, 262-66; London Decl. ¶¶ 22-24, 2-JA-254-55; Compl. ¶¶ 20-25, 1-JA-7-8 (collecting complaints of rape, stalking, abduction, and physical assault, including of minors). Because Uber prioritized growing quickly, it didn't sufficiently vet its drivers: 12-15% of drivers eligible under Uber's standards flunked official state background checks. London Decl. ¶ 8, 2-JA-249. Uber also had to pay millions of dollars to settle lawsuits for fraudulently advertising Uber as offering "the safest rides on the road," with "the strictest standards possible" that "go above and beyond local requirements." *Id.* ¶ 13, 2-JA-252.

Uber was forced to admit that it received reports of nearly 6,000 assaults in a two-year period, though it continued to withhold data on certain categories of sexual misconduct. *Id.* ¶ 15, 2-JA-253. Uber has admitted that because of gaps in its background check process, the company "expect[s] to continue to receive complaints from riders and other consumers, as well as actual or threatened legal action . . . related to Driver conduct." *Uber 2023 Annual Report 18 (Form 10-K)* (Feb. 15, 2024), https://www.sec.gov/ix?doc=/Archives/edgar/data/1543151/000154315124000012/uber-20231231.htm. And, just last week, the district court in the MDL ordered Uber to turn over the sexual-misconduct data that it was trying to keep secret. *See In re Uber Techs., Inc., Passenger Sexual Assault Litig.*, 2024 WL 3364015, at *5-6 (N.D. Cal. 2024).

Now that Uber can no longer block survivors from going to court, it is pushing ballot initiatives that would make it more difficult to successfully hold the company accountable. Uber recently backed a ballot initiative in Massachusetts that deployed "murky language" to "redefine the scope of tort recovery for third parties, including those who may have been injured in traffic accidents caused by the negligence of app-based drivers, or even sexually assaulted by them." *Koussa*, 188 N.E.3d at 519-20, 522. The Massachusetts Supreme Judicial Court unanimously struck it from the ballot. *Id.* at 522-23. The Court emphasized the risk "that well-financed special interests would exploit the initiative process to their own ends" by "presenting voters with confusingly and misleadingly formulated petitions." *Id.* at 523.

C. Ordinary Nevadans rely on contingency fees to obtain counsel and access courts, which Uber's initiative would dramatically imperil.

The appellants submitted extensive evidence attesting to how a drastic limitation of contingency fees would have serious effects on ordinary Nevadans' ability to access courts—an effect that is not mentioned in the initiative's description. This evidence came from leading experts on contingency fees and access to justice as well as dozens of declarations from practicing Nevada attorneys.

1. The effects of Uber's initiative were detailed by Herbert Kritzer, "widely viewed as the leading academic on contingent fee representation." David L. Schwartz, *The Rise of Contingent Fee Representation in Patent Litigation*, 64 Ala. L. Rev. 335,

338 n.5 (2012). Professor Kritzer explained that Uber's initiative "would in fact *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, 1-JA-94.

Contingency fees are the "key to the courthouse" for ordinary people. *Id.* ¶ 34, 1-JA-105. That's because most people with potential legal claims—whether they are sexual-assault survivors or first responders hurt on the job—"lack the resources to hire an attorney on an hourly-fee basis" to vet their claims, build a case, prosecute the case to trial, and cover legal expenses. *Id.* ¶ 33, 1-JA-104-05. Even those who could afford to pay by the hour couldn't "take the risk that they might obtain no recovery or the recovery that they do obtain will be less than their legal expenses." *Id.* For most people, contingency fees are the only way to obtain legal representation because they are the only arrangement where the attorney provides not only legal services, but also much-needed "financing and insurance services, allowing clients to defer payment until their claims are resolved and only if they are resolved in the clients' favor." *Id.* ¶¶ 5, 22, 1-JA-94, 99.

A lawyer can afford to provide all these services—to perform legal work, front the litigation costs, and shoulder the risk of non-payment—only if the percentage is enough to justify it. The percentage dictated by the market (typically between 33% and 40%) is enough in many cases. *Id.* ¶ 42, 1-JA-108-109; Coolbaugh Decl. ¶¶ 19-22,

2-JA-291. Even then, however, "in a majority of percentage-of-recovery cases, most attorneys receive a fee less than what would have been yielded if the attorney had been paid on an hourly-fee basis." Kritzer Decl. ¶ 22, 1-JA-99.

Cut the percentage in half, however, and the calculus would change dramatically. *Id.* ¶¶ 41-44, 1-JA-108-09. This would, Professor Kritzer explains, "reduce fees to such an extent that it would not be economical for attorneys to represent most clients in a wide range of cases where people have been harmed or their rights have been violated." *Id.* ¶ 6, 1-JA-94. "That would sharply decrease the availability of legal services in Nevada" because "most potential clients would not be able to proceed if required to pay their attorney on an hourly-fee basis." *Id.*

This conclusion was echoed by another contingency-fee expert, conservative legal scholar Brian Fitzpatrick, who explained that Uber's initiative "is likely to reduce the number of meritorious suits against companies like Uber." Fitzpatrick Decl. ¶ 6, 1-JA-75. As a result, "many victims will recover nothing at all as a result of the proposal because it would disincentivize private lawyers from agreeing to prosecute cases that they would otherwise have been incentivized to take on." *Id.* ¶ 5, 1-JA-75.

"None of this," Professor Fitzpatrick pointed out, "is surprising." *Id.* "[T]he people who are in the best position to know how much they need to pay their lawyers to maximize their net recoveries are the victims themselves"—not their adversaries

in court. *Id.* ¶ 8, 1-JA-76. Uber "does not want to maximize plaintiffs' net recoveries; it wants to *minimize* their recoveries." *Id.* ¶ 9, 1-JA-77.

And this effect would be entirely one-sided. The proposed law is limited to a "person seeking damages in a civil case" and a "plaintiff or plaintiffs." 1-JA-52. But many defendants are represented on contingency in civil cases, and there would be no limit on how much they could pay their lawyers. Hinkle Decl. ¶ 13, 2-JA-229-230

2. The conclusions of these experts were borne out by dozens of declarations from lawyers across a range of practice areas—including workers' compensation, sexual assault, civil rights, eminent domain, insurance law, personal injury, patent law, consumer protection, social security, and commercial litigation. Compl. ¶ 87, 1-JA-24-26 (collecting examples).

As explained by one local attorney who represents survivors, Uber's initiative "would make it much harder for survivors of sexual assault or sexual harassment to come forward, obtain qualified counsel, and seek redress in the civil justice system in our state." Jacob Leavitt Decl. ¶ 12, 3-JA-370. Sexual-assault cases "are not easy to litigate. They entail risk, time, and costs. If lawyers cannot break even on these cases, it is much less likely that survivors will be able to find competent counsel." *Id.* This came from experience: He represents a woman who was drugged in Las Vegas by an Uber driver who was a registered sex offender—a fact that even a minimally adequate background check would have uncovered. *Id.* ¶¶ 4–8, 3-JA-368-369.

Other attorneys for survivors report the same. The initiative "would make it nearly impossible to take on cases against rideshare companies when their drivers sexually assault passengers." Hyman Decl. ¶ 11, 3-JA-339. Their clients "cannot afford to hire an attorney on an hourly basis" or risk being stuck with the entire bill and no recovery if the company prevails in court. *Id* ¶¶ 7, 10, 3-JA-338; *see also* Watkins Decl. ¶¶ 4, 13, 3-JA-457, 459. Yet another lawyer whose "case load consists of sexual harassment cases" and other civil-rights cases states that his firm, which operates on a shoestring budget in northern Nevada, would no longer be "financially solvent." Mausert Decl. ¶¶ 5-7, 3-JA-397.

This effect on Nevadans' access to justice will sweep far more broadly. The President of the Reno Police Protective Association explained how officers injured in the line of duty will often "have modest and low-value workers compensation claims." Waddle Decl. ¶ 10, 2-JA-269. They would be "significantly harmed" by the initiative because their ability to find an attorney would be "significantly limited." *Id.* A lawyer who represents injured first responders estimates that his firm would no longer be able to represent "at least" half of its clients, "and probably far more than that," because an hourly billing structure "isn't anywhere in the realm of possibility for most working men and women in Nevada." Mills Decl. ¶¶ 3–4, 6, 11, 3-JA-404-406. Other workers-compensation attorneys paint a similarly dire picture. *See, e.g.*, Kampschror Decl. ¶¶ 6, 8, 3-JA-348 ("[We] would have to decline a significant

number of cases (75%) due to the cost of the law firm to handle the claim, compared to what fee the law firm could recover."); Gallagher Decl. ¶ 7, 3-JA-319 ("I don't know of any lawyers who would represent clients [in workers' compensation cases] under [a 20% cap]—it is just not feasible.").

Many other attorneys who represent people injured by corporate wrongdoing (abuse in a nursing home, say, or a defective product) likewise testify that they "would not be able to agree to represent most of the clients [they] currently do." Ellis Decl. ¶ 12, 3-JA-313. They "may even be unable to continue operating." *Id.* ¶ 12, 3-JA-314. Declaration after declaration attested to this effect:

- "We could never afford to litigate smaller claims (anything valued at under $50,000) because we couldn't afford to pay the staff necessary to work on those claims. Those claims represent the majority[] of our practice." Moss Decl. ¶ 7, 3-JA-422.

- "If this initiative passed, the required fee cap would prevent us from taking the vast majority of cases on a contingency fee basis"—"around 95% of the thousands of clients we have helped would have been turned away due to their inability to pay an hourly fee and case costs." Hicks Decl. ¶ 16, 3-JA-332.

- "[T]his initiative would put my firm out of the business of helping injured clients." Chumbler Decl. ¶ 7, 3-JA-308.

- "[T]his initiative would put me out of business or force me to move into another area of law after thirty-one years of practice." Jones Decl. ¶ 8, 3-JA-343.

- "[T]his initiative would make it impossible for me to function … The [civil-rights] clients I represent would not find representation." Keyser-Cooper Dec. ¶ 17, 3-JA-360.

- "[T]his initiative would essentially force our firm to either (1) no longer accept 80–90% of the cases we currently take on contingency, (2) force the law firm to shut down leaving our staff unemployed," or "(3) force me and any of our attorneys to look for new work out of state or in a different field of law." Cameron Decl. ¶ 6, 3-JA-291.

- "My practice would easily be cut in half, at least." Mainor Decl. ¶ 7, 3-JA-393.

- "If a 20% contingency fee cap were put in place, we would very likely stop handling medical malpractice cases and product defect cases in Nevada." Granda Decl. ¶ 11, 3-JA-325.

Other types of legal services, too, would dry up. Social-security claimants would be at risk of losing their benefits. *See, e.g.*, Mosich Decl. ¶ 14, 3-JA-417 ("[I]t may prove necessary to stop handling all Supplemental Security Income cases due to the cost to the law firm to handle the claim, compared to what fee the law firm could recover."). Patent owners would find it harder to protect their patents. *See* Benns Decl. ¶ 5, 3-JA-277 ("[I]t would make it extremely difficult, if not impossible, for us to consider representing Nevada businesses or individuals in patent cases on a contingent-fee basis."). Small business owners would suffer. *See* Simon Decl. ¶ 8, 3-JA-436 (explaining that contingency business litigation would become "difficult, if not impossible"). And consumers and workers throughout Nevada could no longer vindicate important rights. *See* Kind Decl. ¶ 18, 3-JA-365-366.

Not only are contingency fees necessary, but clients strongly prefer them "for a number of reasons." Valiente Decl. ¶ 8, 3-JA-452. Contingency fees "align the interests of lawyer and client" because "[t]he lawyer gains only to the extent his client

gains." *Kirchoff v. Flynn*, 786 F.2d 320, 325 (7th Cir. 1986). And they "transfer a significant portion of the risk of loss to the attorneys." *Portsmouth 2175 Elmhurst, LLC v. City of Portsmouth*, 837 S.E.2d 504, 516 (Va. 2020).

And if Uber succeeds, the appellants pointed out, Nevada will be an extreme national outlier. No other state even comes close to imposing such a draconian cap on contingency fees. Hinkle Decl. ¶ 5, 2-JA-226. This means that ordinary Nevadans would confront the highest barriers in the nation to recovering compensation for their harms.

D. The initiative would deprive Nevada Medicaid and other state programs of millions of dollars.

The appellants also introduced unrebutted evidence demonstrating that the initiative would have serious effects on Nevada Medicaid and other state programs that serve low-income Nevadans. The result is that taxpayers will end up footing the bill, rather than tortfeasors—a consequence that is again not mentioned in the description of effect.

1. The biggest effect would be on Nevada Medicaid, which relies on reimbursements from civil lawsuits. Sasser-Norman Decl. ¶¶ 18–28, 1-JA-197-200. When Medicaid covers an individual's medical bills, if that person then receives money in a civil lawsuit, Medicaid is reimbursed out of the recovery. *Id.* This process, known as subrogation, ensures that the cost of the harm is borne by the responsible parties, not the taxpayer. *Id.* ¶ 28, 1-JA-200. As this Court has explained, this ensures

"fairness to the taxpayers." *Turnbow v. Dep't of Hum. Res.*, 109 Nev. 493, 496, 853 P.2d 97, 99 (2003).

Because the initiative would make it significantly harder for Nevadans to obtain counsel to recover compensation, the initiative would dramatically reduce these reimbursements. Sasser-Norman Decl. ¶ 4, 1-JA-191. Currently, these reimbursements account for as much as $19 million a year. *Id.* ¶¶ 34-35, 1-JA-201-202. This number likely understates the true amount of money at risk, as it includes only direct reimbursements to Medicaid and Medicaid managed care organizations. *Id.* ¶ 36, 1-JA-202. But many hospitals currently seek reimbursement out of people's compensation from civil lawsuits instead of billing Medicaid, and if those lawsuits are suppressed, these hospitals will bill Medicaid directly. Sasser-Norman Decl. ¶ 36, 1-JA-202; Watkins Decl. ¶¶ 15-22, 3-JA-459-460.

Because "[s]erious injuries do not discriminate," the worst impacts will land on "small children, the elderly, single mothers, [and] indigent citizens." Mainor Decl. ¶ 4, 3-JA-391. And "[b]ecause low-income Nevadans are most likely to rely on Medicaid, if they cannot recover for their injuries, the amount of money reimbursed to Medicaid will plummet." Sasser-Norman Decl. ¶ 30, 1-JA-200-201; *see also* Kritzer Decl. ¶ 9, 1-JA-95.

The initiative would thus deprive Nevada Medicaid of millions, if not tens of millions, of dollars in reimbursements annually. Sasser-Norman Decl. ¶¶ 38, 48, 1-

JA-203, 206. And "[g]iven 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, 1-JA-203.

This expert evidence is once again supported by on-the-ground evidence about just how much money Nevada attorneys reimburse to health programs and save the taxpayer:

- "Each year our firm reimburses hundreds of thousands, some years millions, to outside government entities such as Medicare and Medicaid as well as state hospitals that are required to provide care to uninsured patients, workers compensation and third party insurers for care and benefits." Moss Decl. ¶ 10, 3-JA-422.

- "[O]ur firm alone recovers millions of dollars … every single year" on behalf of "programs such as Nevada Medicaid, Medicare, Nevada's self-funded PEB health plans, local governments, Northeastern Nevada Regional Hospital." Gallagher Decl. ¶ 10, 3-JA-320.

- "Year after year, our firm reimburses Medicare, Medicaid and other state, county, federal insurers, as well as private insurers and unions, in excess of $1,000,000 for paid benefits." Carter Decl. ¶ 22, 3-JA-303.

- "Our firm has paid millions of dollars over the years to Medicare, Medicaid, Medicaid Managed Care Organizations (MCO), TriCare, and ERISA plans on subrogation claims." Watkins Decl. ¶ 14, 3-JA-459.

- Another attorney estimated lost reimbursements from his firm "would be in the hundreds of thousands of dollars a year." Mainor Decl. ¶ 9, 3-JA-393.

Nevada Medicaid isn't the only public health program that would suffer. The Children's Health Insurance Program (CHIP) provides coverage to tens of thousands

of "Nevada children who are not eligible for traditional Medicaid." Sasser-Norman Decl. ¶ 13, 1-JA-193; *see also* Compl. ¶ 120, 1-JA-33. Because CHIP similarly relies on subrogation for reimbursements, "the analysis of how [Uber's initiative] will impact the Nevada Medicaid budget applies to CHIP in the exact same manner." Sasser-Norman Decl. ¶ 13, 1-JA-193.

2. The loss of private attorneys would also be disastrous for Nevada's legal aid organizations. These organizations cannot, on their own, hope to handle the legal needs of low-income Nevadans. Sasser-Norman Decl. ¶ 9, 1-JA-192. So legal aid organizations "refer out hundreds of cases to the private bar in Nevada every year—cases that Legal Services is ill equipped to handle because of limited resources and the overwhelming legal needs of our community." *Id.* This Court's Access to Justice Commission described the scope of the problem: "[T]hree out of four low-income Nevadans who seek to protect their families, their homes, and their livelihoods in a legal crisis must proceed in court without legal help." Ken Smith & Kelly Thayer, *Nevada Legal Needs and Economic Impact Study: Final Report* (Oct. 31, 2018), https://perma.cc/58DK-JDHJ. In other words, "[t]he problem of unmet legal need in Nevada is already dire" and "[t]his initiative would only make it worse." Sasser-Norman Decl. ¶ 10, 1-JA-192. The same goes for the "understaffed[] and underfunded Nevada Attorney for Injured Workers." Mills Decl. ¶ 13, 3-JA-407.

3. Still other important state programs rely on reimbursements from civil suits. The Victims of Crime Program uses state and federal funding to "to provide assistance to persons who are victims of violent crime or the dependents of those victims," including hospital bills, mental-health counseling, and wage loss. Sasser-Norman Decl. ¶¶ 40, 44, 1-JA-204-205. Like with Medicaid, if the victim recovers compensation from the perpetrator, Nevada can subrogate that amount. NRS 217.240. Thus, "[w]hen money is recovered by the Victims of Crime Program, that money is allocable to other victims." Sasser-Norman Decl. ¶ 45(c), 1-JA-205. And "[t]he consequence of not recovering this money means the Victims of Crime Program will have to be funded from the State's General Fund or that services to victims will be cut." *Id.*

The description does not mention any of these effects on the State's budget and programs, and polling revealed that nearly *half* of Nevadans mistakenly thought the initiative would actually save the State money. Miller Decl. ¶ 10(f), 1-JA-181.

E. The initiative would impose barriers on access to justice in a vast range of cases, from sexual assault to commercial business litigation.

The appellants also introduced unrebutted evidence that ordinary Nevadans wouldn't realize the true breadth of the initiative.

Despite Uber's public messaging focused on a "small number" of "billboard attorneys," 1-JA-62, the initiative would apply to the vast category of any "civil case,"

1-JA-53. The appellants presented evidence from experts and Nevada attorneys about just how broad this effect would be. A sweeping range of cases are often brought on contingency, including: patent and other intellectual property cases; law enforcement officers and first responders injured in the line of duty cases; general commercial business litigation; suits for fraud on the state or federal government; eminent domain and takings cases; antitrust and securities cases; contract disputes; elder abuse cases; probate cases; social security cases; racial discrimination and other civil rights cases; ERISA cases; consumer protection and deceptive trade practices cases; air disasters, mass shootings, and terrorism cases; insurance company bad faith in denying people coverage and handling cases; unfair debt collection and fraud cases; water and soil contamination cases, pesticide and toxin exposure in agriculture communities cases; and bankruptcy and creditors' rights cases. Compl. ¶ 87, 1-JA-24-26 (collecting sources).

Once again, the evidence showed that Nevada voters would be unaware that the initiative covers such cases. A poll of Nevadans who were provided with the initiative's description of effect revealed that nearly half did not understand that the initiative would cover sexual-assault cases. Miller Decl. ¶¶ 1-9, 10(e), 1-JA-179-180, 181. Around 40% did not understand that it would cover class actions or elder-abuse cases. *Id.* ¶¶ 10(c), (d), 1-JA-181. And nearly one third "did not understand that the

initiative would apply to wrongful death lawsuits." *Id.* ¶ 10(b), 1-JA-180-181. But the vast majority understood that it applied to car crash lawsuits. *Id.* ¶ 10(a), 1-JA-180.

Professor Michael McCann, a leading expert on public understanding of the justice system, explained these results. These responses illustrate "how decades of public relations campaigns by big companies like Uber have shaped the public's view of lawyers, such that people reflexively associate them with tropes about 'ambulance chasers' and 'billboard attorneys,' not advocates for survivors of sexual assault or the families of victims of elder abuse." McCann Decl. ¶ 18, 1-JA-149. "What is particularly striking is that the description of effect only talks about limits on attorney fees in 'a civil case,'" but even still "that seemingly neutral phrasing meant that nearly half of Nevadans polled did not understand the true scope of this initiative." *Id.*

F. The initiative's attempt to change how medical costs are allocated would further suppress access to justice.

The appellants also pointed to Uber's effort to dramatically change not just contingency fees as a percentage of recovery, but the definition of recovery itself. The description of effect compares the initiative to existing caps, such as the "limit [on] attorney fees in medical malpractice cases to 35% of any recovery." 1-JA-53. The appellants pointed out, however, that the initiative's definition of recovery is meaningfully different from the definition of recovery under existing law.

Under existing medical-malpractice law, "'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 copies the first sentence, but entirely removes the second. 1-JA-52. The appellants pointed out that under longstanding principles of statutory interpretation, this would mean that medical care costs would be deducted from a recovery before an attorney's fees are calculated. Compl. ¶ 132, 1-JA-37.

Such a change would cap attorneys' fees far below 20% of recovery in many cases. In injury cases, the amount of recovery is anchored to medical bills, which can make up 40–50% of the total recovery. Watkins Decl. ¶ 27, 3-JA-461. Accordingly, if such bills are subtracted from the amount of recovery before a contingency fee is calculated, an attorney wouldn't get 20% of the actual amount recovered but 20% of a far smaller sum. *Id.* For some practices, 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, 3-JA-300; *see also* Moss Decl. ¶ 8, 3-JA-422 (amount would be "less than 10% of the actual recovery"); Cameron Decl. ¶ 7, 3-JA-292-293; Watkins Decl. ¶ 27, 3-JA-461. "[A] wide variety of Nevadans would never have access to the [c]ourts because it would be financially unsustainable for any lawyer to assist with these cases." Moss Decl. ¶ 8, 3-JA-422. Here too, the harm would be greatest for "unemployed, low-income, and fixed-income tort victims, and/or those without

health insurance, as they would have difficulty in finding counsel to accept their cases with little to no fee available." Watkins Decl. ¶ 29, 3-JA-461.

Once again, this went unmentioned in the description of effect. Even attorneys were confused. *See, e.g.*, Watkins Decl. ¶ 24, 3-JA-460. And polling found that almost no Nevadans realized that attorneys would receive below 20% of recovery—much less something significantly below 20%. Miller Decl. Q1-Q3, 1-JA-182.

G. Proceedings before the district court

In the district court, Uber did not submit any actual evidence of its own about the effects of its initiative to rebut the appellants' extensive evidentiary record. Nor did Uber challenge any of the appellants' evidence. Instead, the company just argued that this evidence about the initiative's effects (and how ordinary Nevadans would not understand those effects) was "beside the point." 4-JA-549.

On May 10, 2024, the district court issued an order denying declaratory and injunctive relief and, three days later, issued a revised order fixing a typographical error. The district court observed that "Plaintiffs have made strong argument[s] as to the initiative having the effect of precluding access to legal counsel, reducing the reimbursement to the State Medicaid fund, and changing the calculation of contingent fees by removal of medical expenses from the calculations thereof." 5-JA-748. The court did not make any factual determinations—despite this Court's admonition about the importance of making factual findings "in the first instance

[of] the effects resulting from the initiative." *Prevent Sanctuary Cities*, 134 Nev. 998, 2018 WL 2272955, at *5. The district court then concluded that these effects and changes were not "germane" to the relevant legal standards. 5-JA-748. The appellants filed this timely appeal on June 7, 2024.

SUMMARY OF ARGUMENT

I. Unrebutted evidence shows that the initiative's description of effect is "deceptive or misleading" as a matter of law. *Educ. Freedom PAC*, 512 P.3d at 304. The description completely omits any mention of practical effects of the kind this Court has singled out as "material omission[s]." *Id.* Those include: (A) a drastic limit on the ability of ordinary Nevadans to access courts and the corresponding risk of "nonpayment" to "injured plaintiff[s]," *Jones*, No. 43940 at 2 & n.2; (B) a "substantial fiscal impact" in the form of profound and lasting harm to the State's Medicaid fund and programs that help low-income Nevadans, *Educ. Freedom PAC*, 512 P.3d at 304; (C) a concealed significant change in "existing policies and laws" about how recovery is calculated, *Prevent Sanctuary Cities*, 134 Nev. 998, 2018 WL 2272955, at *4; and (D) the true "breadth and range of effects that the initiative will have" on countless areas of civil law, from sexual assault to commercial litigation, *id.*

Not only does the description fail to alert Nevadans to these serious effects, but unrebutted survey evidence showed just how many Nevadans would be misled. *See*

Miller Decl. ¶ 10, Q1-Q3, 1-JA-181-82. That makes this a clear example of a deceptive, misleading, and inadequate description of effect.

II. The initiative is also invalid because it violates the single-subject rule. NRS 295.009(1)(a). It does so in two distinct ways.

First, when determining an initiative's purpose, this Court looks not just to the initiative's "textual language" but to "proponents' arguments." *Las Vegas Taxpayer Accountability Comm. v. City Council of City of Las Vegas*, 125 Nev. 165, 180, 208 P.3d 429, 439 (2009). And both Uber's presentation of the initiative and unrebutted evidence show that Nevadans will understand the initiative as limited to the specific purpose of reducing compensation for a "small number" of "billboard attorneys." 1-JA-62. But in reality, the initiative's "extremely broad" scope actually covers "myriad other" areas "that do not fall even within the most broad definition" of any supposed crisis of billboard attorneys. *Nevadans for the Prot. of Prop. Rts., Inc. v. Heller*, 122 Nev. 894, 908, 141 P.3d 1235, 1244 (2006). The initiative therefore fails to give "sufficient notice" of the many different "interests likely to be affected by the proposed initiative." NRS 295.009(2).

Second, while the provisions of the initiative must be "germane" to a single subject, NRS 295.009(2), Uber is trying to sneak through a complex change in the definition of recovery itself, *see supra* 23-25. That is not in any sense "germane" to capping fees at 20% of recovery—since it would often result in a cap far below 20%,

see supra 24. Once again, there is unrebutted evidence that Nevadans won't notice or understand this change—exactly what the single-subject rule is designed to avoid. *Las Vegas Taxpayer*, 125 Nev. at 176-77, 208 P.3d at 437.

III. Finally, the initiative violates the Nevada Constitution's "requirement that each signer be given the opportunity to review a measure's full text." *Las Vegas Convention & Visitors Auth. v. Miller*, 124 Nev. 669, 686, 191 P.3d 1138, 1149 (2008). And under the 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. While Uber's description of effect acknowledges that it will be repealing, nullifying, or amending several existing laws on attorneys' fees, the initiative petition does not include the text of any of those laws. And that is particularly problematic here, where it is only by looking at the text of the existing medical-malpractice cap and the initiative side by side that Nevadans could see Uber's attempt to sneak through a significant change in the allocation of medical costs.

ARGUMENT

I. Uber's description of effect is misleading about the initiative's drastic consequences for ordinary Nevadans and the State itself.

Each initiative petition must include "a description of effect of the initiative." NRS 295.009(1)(b). "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. "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." *Coal. for Nevada's Future v. RIP Com. Tax, Inc.*, No. 69501, 132 Nev. 956, 2016 WL 2842925, at *2 (May 11, 2016) (unpublished). Thus, when one of Uber's signature gatherers shows up on a Nevadan's doorstep or approaches her in a parking lot, asking her to sign a petition to help protect victims, "it is imperative that [she] understand the effects and ramifications of their signature." *Id.* at *4. This protects Nevadans' constitutional rights to direct democracy by ensuring that they are not misled about what they are supporting.

This Court has established well-settled parameters for the description of effect. It must summarize "what the initiative is designed to achieve and how it intends to reach those goals" and do so in a manner that is not "deceptive or misleading." *Educ. Freedom PAC*, 512 P.3d at 304. It need not include every "possible ramification" of an initiative. *Helton v. Nevada Voters First PAC*, 138 Nev. 483, 490, 512 P.3d 309, 316 (2022). But a "description of effect's failure to address [a] substantial impact is a material omission." *Educ. Freedom PAC*, 512 P.3d at 304. In other words, "[t]he description does not necessarily need to explain every effect, or hypothetical effects, but it *does* need to accurately set forth the main consequences." *No Solar Tax Pac v. Citizens For Solar & Energy Fairness*, No. 70146, 132 Nev. 1012, 2016 WL 4182739, at *2 (Aug. 4, 2016)

(unpublished) (emphasis added). This is judged not from the viewpoint of trained lawyers, but from the standpoint of what "a casual reader" will "understand." *Nevada Judges Ass'n v. Lau*, 112 Nev. 51, 59, 910 P.2d 898, 903 (1996).

Uber's description flunks that test several times over. It fails to inform Nevadans about the serious consequences for Nevadans' access to justice, the millions of dollars in lost reimbursements for Nevada Medicaid, serious changes to existing law, and the initiative's sweeping breadth.

A. The description doesn't inform voters that the initiative will dramatically limit Nevadans' access to justice.

Unrebutted evidence shows that the initiative would dramatically limit the ability of ordinary Nevadans to obtain representation and access the justice system. The description of effect makes no mention of this "substantial impact" on rights that are vitally important to Nevadans. *Educ. Freedom PAC*, 512 P.3d at 304. This "material omission" is "deceptive and misleading." *Id.*; *see also Schs. Over Stadiums v. Thompson*, 548 P.3d 775, 2024 WL 2138152, at *2 (Nev. May 13, 2024) (unpublished) (description of effect was "misleading" and "inadequate" because it "does not describe the practical effects"); *RIP Com. Tax*, 132 Nev. 956, 2016 WL 2842925, at *3 (description was invalid because "nowhere does this description reveal the significant practical ramifications").

1. The description of effect must "accurately describe" both "the [initiative's] purpose and the consequences." *No Solar Tax Pac*, 132 Nev. 1012, 2016 WL 4182739, at

*2. But the initiative does not even have a title that would summarize the general purpose of the initiative. *See Las Vegas Taxpayer*, 125 Nev. at 180, 208 P.3d at 439. This omission is striking given how loudly Uber trumpets the initiative's supposed purpose in every other forum, claiming that the primary purpose of the initiative is to "protect plaintiffs' judgments," "put victims first," and "protect the people actually doing the work." 1-JA-62. Even the name of the PAC Uber created—Nevadans for Fair Recovery—sends the misleading message that the initiative's purpose is increasing Nevadans' compensation.

The description's failure to inform Nevadans of the initiative's consequences is worse still. Depriving Nevadans of access to the civil justice system wouldn't just be one of "the main consequences," it would be the primary consequence. *No Solar Tax Pac*, 132 Nev. 1012, 2016 WL 4182739, at *2. "[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, 429 P.3d 664, 671 (Nev. App. 2018). They "enable persons who could not otherwise afford counsel to assert their rights." *Munger, Reinschmidt & Denne, L.L.P. v. Lienhard Plante*, 940 N.W.2d 361, 366–67 (Iowa 2020) (compiling cases). Ordinary Nevadans have no hope of litigating against the Ubers of the world unless "someone else was willing to front the funds for attorneys and fees." *In re Abrams & Abrams, P.A.*, 605 F.3d 238, 246 (4th Cir.

2010). And as the Executive Director of the Nevada Justice Association details, there is a long history in Nevada of litigation in the public interest that was only possible due to contingency fees. Coolbaugh Decl. ¶¶ 18-22, 30-33, 2-JA-218-219, 222.

Unrebutted evidence backs that up. Because contingency fees are the "key to the courthouse," this 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, 1-JA-93-94, 104-105; *see also* Fitzpatrick Decl. ¶¶ 5-6, 1- JA-74-75. And dozens of Nevada lawyers described in detail how the initiative would force them to take far fewer cases representing low-income Nevadans or even close their practices altogether. *See supra* 15-16.

2. Uber did not rebut any of this evidence below. Even the district court recognized the "strong argument[s] as to the initiative having the effect of precluding access to legal counsel." 5-JA-748. Instead, the company's only argument—echoed by the district court—was that this effect was not "germane" to NRS 295.009(1)(b). *Id.* That's incorrect.

Under any definition of "significant practical ramifications," a massive reduction in Nevadans' ability to obtain counsel and recover compensation would qualify. *RIP Com. Tax*, 132 Nev. 956, 2016 WL 2842925, at *3. And it certainly qualifies under this Court's definition: 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, "many victims will recover nothing at all as a result of the proposal." Fitzpatrick Decl. ¶ 5, 1-JA-74-75.

More fundamentally still, access to counsel and courts are of great importance to Nevada voters and our legal system. *See, e.g.*, *Miller v. Evans*, 108 Nev. 372, 374, 832 P.2d 786, 787 (1992) (citing the "fundamental constitutional right of access to the courts"); *Imperial Credit Corp. v. Eighth Jud. Dist. Ct.*, 130 Nev. 558, 562, 311 P.3d 862, 865 (2014) (noting "the importance ascribed to a party's right to select the counsel of his or her choice"). Drastically reducing the ability of Nevadans to exercise those rights in practice is certainly a "substantial impact." *Educ. Freedom PAC*, 512 P.3d at 304.

And finally, the effect on access to courts would be particularly troubling to voters because it will be entirely one-sided. While the initiative is limited to a "person seeking damages in a civil case" and a "plaintiff or plaintiffs," 1-JA-52, 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," 1-JA-53. The many defendants who are represented on contingency in civil cases will not face any limits on how much they can pay their lawyers. Hinkle Decl. ¶ 13, 2-JA-229-230. 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. *RIP Com. Tax*,

132 Nev. 956, 2016 WL 2842925, at *2. Indeed, the Supreme Court of Oregon struck a description of an initiative to cap contingent fees for failing to "refer to the fact that the measure will affect only plaintiffs." *Pelikan v. Myers,* 153 P.3d 117, 121 (Or. 2007).

In sum, the failure to make any mention of what this Court has already recognized would be a serious consequence renders the description of effect misleading and inadequate.

B. Uber doesn't disclose that the initiative will cause Nevada Medicaid to lose millions of dollars in reimbursements.

That's not the only serious practical consequence that the description omits. This Court has repeatedly held that a significant fiscal impact must be disclosed. Unrebutted evidence shows that the initiative would have a significant fiscal impact by depriving Nevada Medicaid of millions of dollars in reimbursements. And it is undisputed that the description of effect does not mention this at all. That is a straightforward violation of NRS 295.009(1)(b).

1. Descriptions of effect must 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 RIP Com. Tax*, 132 Nev. 956, 2016 WL 2842925, at *4 (failure to mention "critical consequence[s]" for "the state budget" was "deceptive" and inadequate). Indeed, this Court has specifically held that a prior initiative was legally deficient and "misleading" because it 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 2-4. 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.*

That's exactly the problem here: Nothing warns voters that "the amount of money reimbursed to Medicaid will plummet" and the "significant impact to the State's budget [of] the loss of millions of dollars of funds for reimbursing Nevada Medicaid through subrogation." Sasser-Norman Decl. ¶ 30, 1-JA-200-201; *see also* Kritzer Decl. ¶ 9, 1-JA-95. The description also makes no mention of the reimbursements that will be lost for CHIP and the Victims of Crime Program, which also provide crucial assistance to vulnerable Nevadans. *Id.* ¶¶ 13, 40-47, 1-JA-96, 108-112. Nor does the description alert readers that legal aid providers and the Nevada Attorney for Injured Workers would be overwhelmed by cases that private attorneys would no longer be able to take. *Id.* ¶¶ 9-10, 1-JA-95-96; Mills Decl. ¶ 13, 3-JA-406-407.

If depriving millions of dollars from a healthcare program on which a third of the state's population relies wouldn't be a "substantial fiscal impact," it's hard to imagine what would be. *Educ. Freedom PAC*, 512 P.3d at 304. And "[g]iven 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." Sasser-Norman Decl. ¶ 38, 1-JA-203.

2. Yet again, Uber did not rebut any of this evidence below. And again, even the district court acknowledged the "strong argument[s] as to the initiative … reducing the reimbursement to the State Medicaid fund." 5-JA-748. The district court's conclusion that this effect was nonetheless not "germane," *id.*, was clear legal error.

Under this Court's precedent, a "description of effect is deceptive and misleading" as a matter of law if it omits "the substantial fiscal impact the proposed change would have on the state's budget." *Educ. Freedom PAC*, 512 P.3d at 304; *see also RIP Com. Tax*, 132 Nev. 956, 2016 WL 2842925, at *4. Uber itself conceded at the hearing that reducing Medicaid reimbursements is an effect that "is likely to be a concern" in the legal analysis, but simply argued that in this case that effect was not "as certain and as knowable as you could possibly be." 4-JA-698.

Significant fiscal impacts are particularly important because the Nevada Constitution requires the Legislature "to balance the state budget" through taxes sufficient to cover the State's expenditures. *RIP Com. Tax*, 132 Nev. 956, 2016 WL 2842925, at *3 (citing Nev. Const. art. 9, § 2(1)). Thus, "[t]he inevitable ramification of this initiative is either an increase in taxes or a reduction in … funding or other government services." *Educ. Freedom PAC*, 512 P.3d at 304; *see also, e.g.*, Sasser-Norman

¶ 45(c), 1-JA-205 ("The consequence of not recovering this money is that the Victims of Crime Program will have to be funded from the State's General Fund or that services to victims will be cut.").

Finally, not only does the description fail to mention the harm to the state budget, but unrebutted evidence shows that "the description of effect misleads signatories into thinking that the impact on the state's resources" will actually be beneficial. *Educ. Freedom PAC*, 512 P.3d at 304. After being presented with the description of effect, 47.5% of Nevadans wrongly thought that the initiative would actually *save* the State of Nevada money. Miller Decl. ¶ 10(f), 1-JA-181. In other words, the description of effect left voters with the exact opposite impression from the truth. That makes this an especially conspicuous example of being "misleading and deceptive" about a "substantial fiscal impact." *Educ. Freedom PAC*, 512 P.3d at 304.

C. The description doesn't alert voters to a dramatic change in how medical costs are allocated and recovery is calculated under existing law.

To make matters worse, Uber's initiative also tries to sneak through a dramatic change to how recovery is calculated that would suppress claims even further. A description of effect is misleading and inadequate if it only "describes the prohibitory effect of the initiative" and "the impact of that prohibition on existing policies and laws is not described." *Prevent Sanctuary Cities*, 134 Nev. 998, 2018 WL 2272955, at *4. This makes sense. Laws do not exist in a vacuum, and for Nevadans to make an

informed choice, they must be told how the initiative will affect those existing laws. But Uber's description of effect doesn't make any mention of the company's effort to dramatically change existing law about how attorneys' fees are calculated.

1. Currently, for purposes of the contingency-fee cap in medical-malpractice cases, the fees are calculated based on the amount "recovered" in the case, without first deducting the plaintiff's costs of medical care. NRS 7.095(1). The statute includes a two-sentence definition of recovery: "'[R]ecovered' 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 and general and administrative expenses incurred by the office of the attorney are not deductible disbursements or costs." *Id.*

Uber's initiative, however, tries to change all that. The initiative parrots the first sentence of the existing definition of recovery: "the net sum recovered by the plaintiff or plaintiffs after deducting any disbursements or costs incurred in connection with the prosecution or settlement of the claim." 1-JA-52. Yet it entirely removes the second sentence, which states that medical costs are not deducted from the amount of recovery before calculating fees. *Id.* Under the longstanding principle of *expressio unius est exclusio alterius*, if medical costs are excluded from "deductible … costs" in NRS 7.095(1), but not in the initiative's text, courts presume that this is a distinction with a difference. *See, e.g.*, *Horizons at Seven Hills v. Ikon Holdings*, 132 Nev.

362, 369, 373 P.3d 66, 71 (2016) (where a certain type of "costs" were included in one statute and not another, courts "must presume the Legislature did not intend for such costs to be included"); *see also Whitfield v. Nevada State Pers. Comm'n*, 137 Nev. 345, 350, 492 P.3d 571, 576 (2021). In other words, medical costs would be deducted from recovery *before* the attorney's 20% fee is calculated.

The effects of this change would be dramatic. In any case involving an injury, it would slash attorneys' fees well below 20% of recovery. Since recovery will be tied to medical bills, if those bills are subtracted before fees are calculated, the attorney wouldn't get 20% of anything close to the amount recovered. Instead, they'd get 20% of a vastly lower sum. When injuries are involved, 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, 3-JA-300; *see also* Moss Decl. ¶ 8, 3-JA-422; Cameron Decl. ¶ 7, 3-JA-292-293; Watkins Decl. ¶ 27, 3-JA-461. As a result, "a wide variety of Nevadans would never have access to the [c]ourts because it would be financially unsustainable for any lawyer to assist with these cases." Moss Decl. ¶ 8, 3-JA-422.

This would also 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 initiative, 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, 495 P.3d 1103, 1112 (2021).

Not only that, but the initiative would be overriding a contingency-fee system that "align[s] the interests of lawyer and client." *Kirchoff*, 786 F.2d at 325; *see also* Kritzer Decl. ¶ 34, 1-JA-105. 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.

2. It's undisputed that the description doesn't mention this change at all. Once again, 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. The court incorrectly held that such a change was not "germane" to the analysis under NRS 259.009. But an "impact" on "existing policies and laws" is exactly the sort of thing that a description of effect must include. *Prevent Sanctuary Cities*, 134 Nev. 998, 2018 WL 2272955, at *4. And unrebutted evidence showed that virtually no Nevadans realized that attorneys would receive less that 20% of recovery. Miller Decl. Q1-Q3, 1-JA-182.

As for Uber, it couldn't or wouldn't explain whether its proposed initiative would even work this change. The closest Uber came was to assert that any such effect is as yet unknown because "there are various ways in which that interpretation would be made," and that this question of "statutory interpretation 101" will need to be decided by courts "years from now" after the initiative passes. 4-JA-698-99. But if Uber can't explain the meaning of the words that the company itself wrote, how can ordinary Nevadans be expected to fare any better? NRS 295.009(1)(b) does not authorize a sign-now, find-out-later approach. "[I]t is imperative that signers understand the effects and ramifications of their signature." *RIP Com. Tax*, 132 Nev. 956, 2016 WL 2842925, at 4; *see also Educ. Freedom PAC*, 512 P.3d at 304. It would turn Nevada's statutory requirements on their head to require voters to support an initiative first, only to find out later what it actually does.

D. The description doesn't alert Nevadans to the vast scope of cases affected, including sexual-assault cases against large corporations like Uber.

A description of effect must also "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's initiative applies to all "civil case[s]," an exceptionally broad term that is left undefined. 1-JA-53. Unrebutted evidence shows that, as a result, many regular Nevadans have no idea about the staggering breadth of cases that will be

covered by this initiative, instead thinking that it only covers billboard attorneys and car crash cases. That's misleading and inadequate.

1. Unlike other contingency-fee caps, nothing in the initiative's text or description of effect provides any detail about the initiative's true scope. The description simply states that it applies to any "civil case," a term that is left entirely undefined in both the description of effect and the initiative itself. 1-JA-52-53. Contrast this with NRS 7.095's existing limits on contingency fees, which not only explains that it is restricted to "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. Yet Uber's initiative offers no definition of "a civil case," 1-JA-52, even though this is "an exceptionally broad subject," *Las Vegas Taxpayer*, 125 Nev. at 179, 208 P.3d at 438.

This is no small omission. This Court has made clear that a description must "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. And here, that breadth and range is absolutely sweeping. As experts and Nevada lawyers describe, the initiative would sweep in cases including sexual assault; 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), 1-JA-24-26.

Even trained lawyers struggle to understand the full breadth of what is covered, including workers' compensation and social-security disability cases, which are administrative in nature. Mills Decl. ¶ 19, 3-JA-408-409; Watkins Decl. ¶ 23, 3-JA-460; Granda Decl. ¶ 5, 3-JA_323; Mosich Decl. ¶¶ 10–11, 3-JA-416-417. Ordinary voters cannot be expected to fare any better. Unrebutted survey found that fully 45.9% of Nevadans did not understand that this initiative would apply to sexual-assault cases. Miller Decl. ¶ 10(e), 1-JA-181; Compl. ¶¶ 18–46, 1-JA-7-12. Approximately 40% of Nevadans didn't realize that class actions would be covered, with similar numbers for elder-abuse cases. Miller Decl. ¶ 10(c), 1-JA-181.

A description can't be adequate if, after hearing it, nearly half of Nevadans don't understand the kinds of cases that will be covered. Miller Decl. ¶ 10(e), 1-JA-181; McCann Decl. ¶¶ 15–18, 1-JA-149. And "[w]hat 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, 1-JA-149.

The fact that voters won't realize that sexual-assault cases are covered is not some ancillary effect. The initiative would dramatically limit the ability of sexual-

assault survivors to receive compensation from large companies like Uber. *See supra* 13-14. The appellants provided unrebutted evidence of this effect from attorneys who represent sexual-assault survivors—including survivors currently trying to recover from Uber over the company's negligent hiring and supervision. *See, e.g.*, Jacob Leavitt Decl. ¶¶ 4-8, 12, 3-JA-368-69. Indeed, this is especially true when the defendant has pockets as deep as Uber—who will face no limits on the amount it can pay its attorneys to drag out litigation.

The same goes for the many other areas that ordinary Nevadans don't realize the initiative will cover. Each of these has its own significant interests that voters should know about before they sign their names. Take the taxpayers' interest in policing fraud against state healthcare systems. Kritzer Decl. ¶ 32, 1-JA-104. Or the strong public interest in promoting innovation by allowing the inventor in her garage to defend her intellectual property against a big company. *Id.* ¶ 32 n.26, 1-JA-104. Or the interests of families in protecting against elder abuse in nursing homes. Compl. ¶ 87(j), 1-JA-25 (collecting sources). Or the interests of state employees in protecting their pension funds. *Id.* ¶ 87(h) (same). Or the general public's interest in the lower prices and competition that come from antitrust suits. *Id.* ¶ 87(h) (same). Across each of these areas, the results of the initiative would be draconian. Yet ordinary Nevadans are being asked to affix their signature on Uber's petition without any warning of these effects.

2. Uber's only response below was that the category of civil cases should be obvious to anyone who "took civil procedure" in law school. 4-JA-699. But this Court's analysis isn't about what trained lawyers and judges would understand; the question is whether "a casual reader will … understand" the initiative's scope. *Lau*, 112 Nev. at 59, 910 P.2d at 904. Ordinary people aren't born knowing the scope and variety of civil litigation, as the unrebutted evidence shows. And when legal terminology is left undefined, voters are inappropriately put "in the position of guessing as to the effect his or her vote would have unless he or she is an expert in the legal field." *Wilson v. Martin*, 500 S.W.3d 160, 167 (Ark. 2016) (invalidating ballot initiative to cap contingency fees and non-economic damages). This Court does not permit "complex" language to cause "most voters" to fail to "comprehend the true effect of the initiative." *Taxpayers for Prot. of Nevada Jobs v. Arena Initiative Comm.*, 128 Nev. 939, 2012 WL 2345226, at *3 (2012) (unpublished).

3. This breadth is particularly problematic because "the initiative would limit the power" of a part 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.*

Currently, courts determine whether fees are reasonable by using the analysis this Court created, which requires carefully balanced, case-specific analysis of the time, expense, and risk involved. Under Nevada Rule of Professional Conduct 1.5, "[t]he factors to be considered" include:

> (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
> (3) The fee customarily charged in the locality for similar legal services;
> (4) The amount involved and the results obtained;
> (5) The time limitations imposed by the client or by the circumstances;
> (6) The nature and length of the professional relationship with the client;
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
> (8) Whether the fee is fixed or contingent.

Uber's initiative would displace this case-specific judicial analysis for the vast majority of contingency-fee cases.

In doing so, the initiative would displace "rulemaking decisions" of the "governmental body with that authority—the courts." *Nevadans for the Prot. of Prop. Rts.*, 122 Nev. at 915, 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, 165-66, 171 (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 of effect—just like a similar limitation on the power of local governments to regulate their traditional spheres of control. *See Prevent Sanctuary Cities*, 134 Nev. 998, 2018 WL 2272955, at *4.

II. The initiative's regulation of multiple subjects violates the single-subject rule and does not provide Nevada voters with sufficient notice of the interests affected.

The initiative also violates another key statutory requirement: the requirement that an initiative can embrace only "one subject." NRS 295.009(1)(a). The "single-subject requirement" protects the will of the voters by "promoting informed decisions." *Las Vegas Taxpayer*, 125 Nev. at 176-77, 208 P.3d at 436-37. In particular, it "prevent[s] the enactment of unpopular provisions by attaching them to more attractive proposals," thus "concealing" those unpopular provisions from voters. *Id.* 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). Uber's sweeping initiative violates the single-subject rule twice over.

A. Voters will mistakenly understand the initiative as applying to a limited subject area, rather than every subject area of civil law.

To determine whether a petition violates the single-subject requirement, "the court must first determine the initiative's purpose or subject and then determine if each provision is functionally related and germane to each other and the initiative's

purpose or subject." *Helton*, 138 Nev. at 486, 512 P.3d at 314. Particularly where, as here, the proponents "have not been entirely consistent" about the initiative's purpose—offering one purpose to courts and another the public—the Court has an independent duty to determine that purpose. *Nevadans for the Prot. of Prop. Rts.*, 122 Nev. at 907, 141 P.3d at 1243. This involves looking not just to the initiative's "textual language" but to "proponents' arguments." *Las Vegas Taxpayer*, 125 Nev. at 180, 208 P.3d at 439. The key inquiry is what voters would understand to be the initiative's purpose. Only a purpose that voters understand can "provide[] sufficient notice of the general subject of, and of the interests likely to be affected by, the proposed initiative." NRS 295.009(2).

1. To the public, Uber has cast the initiative's purpose in decidedly narrow terms: cracking down on the fees collected by a "small number" of "billboard attorneys" to "put victims first." 1-JA-62. This is reflected in the text's limitation to plaintiffs and the name of the PAC itself: "Nevadans for Fair Recovery." 1-JA-51. To the court below, however, Uber claimed that the initiative's subject is "the limitation of contingency fees in civil cases." 4-JA-551. But that is such an "excessively broad" subject, *Helton*, 138 Nev. at 487, 512 P.3d at 314, that even lawyers aren't sure of the scope of cases covered, and the evidence shows the public fares even worse. *See supra* 43. Such overly broad subjects do not give sufficient notice "of the interests likely to be affected by[] the proposed initiative." NRS 295.009(2). Nor does this alleged

general purpose match up with the more specific initiative the company actually wrote: Uber never explains why, if the goal is limiting contingency fees in "civil cases," 4-JA-551, the initiative applies exclusively to plaintiffs, when attorneys for defendants also use contingency fees, Hinkle Decl. ¶ 13, 2-JA-229-230; Carter Decl. ¶¶ 6, 19, 3-JA-297, 302.

There's a reason that Uber is saying one thing to courts and another thing to everyone else. If Uber told courts that the purpose of the initiative was protecting victims, that purpose would be obviously misleading. The same would be true if Uber had included that purpose in its description of effect or used it as the title of the initiative. Uber's strategy is therefore to keep the initiative's alleged purpose of reining in billboard lawyers out of its official filings, and then connect the dots with misleading statements everywhere else.

But unrebutted evidence shows that this narrower, deceptive subject is what voters will understand. Based solely on the description of effect itself—and none of Uber's outside messaging—many ordinary Nevadans thought that the initiative applies only to car accident or personal injury cases. Miller Decl. ¶ 10, 1-JA-180-181; McCann Decl. ¶ 18, 1-JA-149. As a result, voters think the initiative is about a narrow subject area when it actually covers many other subject areas, each with their own unique interests that will be affected. Compl. ¶ 87, 1-JA-26. That includes the interests of inventors, small businesses, sexual-assault survivors, the taxpayers, the

government, the families of survivors of elder abuse in nursing homes, and state pension funds, to name just a few. *Id.*; Kritzer Decl. ¶ 32 n.26, 1-JA-104.

This confusion is reinforced by the fact that Nevada law has always cabined contingency-fee caps to specific areas, such as medical malpractice. When a restriction has been "exclusively applied" to limited subject areas, voters will be misled if an initiative "lumps … together" a broader range of subject areas "without clearly elucidating the different effects" on those areas. *Lau*, 112 Nev. at 58-60, 910 P.2d at 903-04. For example, in *Lau*, this Court rejected a term limit initiative under which "all public officials—whether legislative, executive, or judicial—are lumped into one initiative." *Id.* at 60, 904. This Court explained that term limits had been "exclusively applied" to executive and legislative branches in the past. *Id.* But "[t]he impact on these elected officials and the branches in which they serve is different," and "[v]oters, while favoring term limits in general, may fail to distinguish between the varying impacts on different branches of government." *Id.*

Just like in *Lau*, Nevada law has cabined contingency-fee caps to specific areas. *See* NRS 7.095 (medical malpractice); NRS 228.116 (state as a client). So have other states, including a Colorado ballot proposal on which Uber relied below. Hinkle Decl. ¶ 5, 2-JA-226 (surveying all 50 states); Whitacre Decl. ¶ 16, 4-JA-588 (Colorado proposal). And, as explained above, while the exceedingly broad category of "civil

cases" may seem obvious to those trained in the law, unrebutted evidence reveals that many Nevadans do not understand the scope of the category. *See supra* 22-23.

2. Uber's petition is thus an attempt at "logrolling": concealing "an unpopular provision" in a "popular provision." *Nevadans for Reprod. Freedom v. Washington*, No. 87681, 140 Nev. Adv. Op. 28, 2024 WL 1688083, at *4 (Apr. 18, 2024) (unpublished). Such logrolling is one thing that "the single-subject requirement is intended to prevent." *Id.* Other state high courts are similarly "particularly attentive when the 'unpopular' item is concealed" such as a "provision changing tort liability of app-based drivers." *Clark v. Att'y Gen.*, 234 N.E.3d 953, 961 (Mass. 2024) (citing *Koussa*, 188 N.E.3d at 523). In this case, the public will see this as a popular measure limited to billboard attorneys, but its true scope is "extremely broad," covering a sweeping (and unpopular) range of cases. *Nevadans for Prop. Rts.*, 122 Nev. at 908, 141 P.3d at 1244. In other words, the initiative covers "myriad other" areas "that do not fall even within the most broad definition" of any supposed crisis of billboard attorneys. *Id.*

As a result, the initiative "fails to provide sufficient notice of the wide array of subjects addressed … or the interests likely to be affected by it." *Id.* at 909, 1245. That is by design. Otherwise, voters would understand the actual (and highly sympathetic) cases that would be affected, and they might wonder why Uber is pushing an initiative to regulate sexual-assault lawsuits. Uber wants to avoid that. So instead of pushing an initiative to suppress sexual-assault cases—which would never pass—

Uber has advanced an initiative that Nevadans will think is about something else entirely. This a clear example of concealing "an unpopular provision [in] a popular one." *Nevadans for Reprod. Freedom*, 2024 WL 1688083, at *4; *see also Koussa*, 188 N.E.3d at 521 (giving as an example of an effect voters would likely "strongly oppose" as one "limiting their own rights to recover money damages from network companies [for] the tortious actions of drivers").

B. Uber cannot use an initiative presented as a cap on contingency fees as a percentage of recovery to smuggle in a dramatic change to the allocation of medical costs.

The initiative also violates the single-subject rule by using an initiative that is purportedly about capping contingency fees at 20% of recovery to "conceal[]" a "complex" change in the separate subject of how medical costs are allocated and how recovery itself is calculated. *Las Vegas Taxpayer*, 125 Nev. at 176-77, 181, 208 P.3d at 437, 440 (holding that initiative violated single-subject rule by encompassing "far more complex [subject] of adopting and amending redevelopment plans"). As explained above, the initiative tries to ensure that contingency fees would only be calculated after the plaintiff's medical costs are deducted from the recovery. *See supra* 37-40.

That is plainly a different subject from just setting a percentage cap on contingency fees. And such a change is not "germane" to Uber's asserted purpose of capping contingency fees at 20%. NRS 295.009(2). This is not a case where two

changes are related because "the effectiveness of one change would be limited without the other." *Helton*, 138 Nev. at 487, 512 P.3d at 315. The opposite is true: This change would drop the fee cap far below 20% of recovery in many cases, rendering any such primary purpose even more misleading. *See* Carter Decl. ¶ 16, 3-JA-300; *see also* Moss Decl. ¶ 8, 3-JA-422; Cameron Decl. ¶ 7, 3-JA-292-293; Watkins Decl. ¶¶ 27, 29, 3-JA-461.

This second subject is particularly problematic because it is so "complex" that voters are particularly unlikely to either notice or understand it. *Las Vegas Taxpayer*, 125 Nev. at 176-77, 208 P.3d at 437. Even trained lawyers found this "unclear." *See, e.g.*, Watkins Decl. ¶ 24, 3-JA-460. For the average voter, the deduction of medical costs and the equation by which recovery and fees are calculated would be complex enough as a standalone subject. When lumped in with a headline change in the percentage of contingency fees, voters cannot be expected to understand what is going on. The evidence bears that out: Voters had no idea that in practice contingency fees will be capped far lower than 20% of recovery. Miller Decl. Q1-Q3, 1-JA-182. That's because voters were focused on what they thought was the sole subject of the initiative: a 20% cap. And that is precisely what the single-subject rule is designed to avoid. As the Supreme Judicial Court of Massachusetts explained in rejecting one of Uber's ballot 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*, 188 N.E.3d at 523.

As noted above, despite being given multiple opportunities below, Uber declined to explain why the language about medical costs was omitted from the definition of recovery in the initiative. And Uber's argument that courts will simply figure out the meaning of the initiative after it passes cannot be squared with the single-subject requirement's goal of "promoting informed decisions" and preventing an initiative from "concealing" changes from the voters. *Las Vegas Taxpayer*, 125 Nev. at 176-77, 208 P.3d at 437. "When even lawyers and judges cannot be sure of the meaning of the contested provisions, it would be unfaithful" to single-subject requirements "to allow the petition to be presented to the voters, with all the attendant risks that voters will be confused and misled." *Koussa*, 188 N.E.3d at 523.

III. The petition deprives voters of the full text of the statutes that would be repealed, nullified, or amended.

Finally, the petition violates the Nevada Constitution's 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). The Constitution provides that "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. As Uber's description of effect expressly acknowledges, the

initiative would supplant three existing legal requirements for contingency fees. 1-JA-53. Yet the initiative does not offer the text of *any* of these provisions so that voters can read the laws they are being called upon to nullify and "know what they are supporting." *Miller*, 124 Nev. at 686, 191 P.3d at 1149. And that is particularly problematic here, where the text of these other provisions would alert voters to changes that would otherwise go unnoticed.

A. The initiative would entirely supplant the existing 35% cap on contingency fees "in medical malpractice cases" from NRS 7.095 and the 25% cap when the state is a client from NRS 228.1116. 1-JA-53. Uber's own description of effect acknowledges this. *Id.* Yet, even though these existing statutory provisions would be rendered a dead letter, the initiative petition omits their text entirely. In other words, the initiative would "revise[] or amend[]" these other laws, but they are not "published at length." Nev. Const. art. 4, § 17. As a result, the petition does not "include the full text of the measure proposed." Nev. Const. art. 19, § 3(1).

Application of this requirement is particularly warranted in light of the specific facts of this case. As noted above, Uber is trying to slip through a change in the allocation of medical costs and the method of calculating recovery. *See supra* 37-40. But it is only by comparing the text of the existing medical-malpractice cap and the initiative side by side that voters can see the change Uber is attempting to carry out. That violates both the letter and the spirit of the full-text rule.

This is not a technicality. "The requirement that each signer be given the opportunity to review a measure's full text serves the purpose of ensuring that signers know what they are supporting." *Miller,* 124 Nev. at 686, 191 P.3d at 1149. That's why this Court has described the full-text requirement as an "essential matter[]." *Id.*

B. Uber's description of effect also acknowledges that in contingency-fee cases, the initiative will supplant the reasonableness requirement of Nevada Rule of Professional Conduct 1.5. Yet the initiative does not include the text of Rule 1.5 at all. That is problematic because the text of Rule 1.5 would allow voters to understand the state of the law that they are being asked to change and thus "know what they are supporting." *Miller*, 124 Nev. at 686, 191 P.3d at 1149. Rule 1.5, established by this Court based on decades of judicial experience, contains a carefully reticulated set of criteria for assessing reasonableness, including the "time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly," as well as the "amount involved and the results obtained." Voters have no idea that this is the scheme Uber is asking them to replace.

CONCLUSION

The district court's judgment should be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type-style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 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 13,974 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: July 15, 2024

/s/ Deepak Gupta
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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that on July 15, 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:

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IN THE SUPREME COURT OF THE STATE OF NEVADA

KATHLEEN MURPHY JONES; JEFFREY W. STEMPEL; SARI AIZLEY; AND RICHARD W. MYERS,
Petitioners,
vs.
DEAN HELLER, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE OF THE STATE OF NEVADA,
Respondent.

No. 43940

FILED

SEP 18 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER GRANTING IN PART PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus seeks to remove Question 3, the "Keep Our Doctors In Nevada" (KODIN) initiative, from the ballot for the November 2004 general election. The petitioners assert that the condensation and explanation prepared by the Secretary of State do not adequately, fairly and sufficiently describe the initiative and its ramifications, that the argument and rebuttal in support of the initiative contain factual inaccuracies and misleading statements that the Secretary should have rejected, and that the fiscal note for the initiative does not accurately state the financial impact that the initiative will have on the state Medicaid fund.

Question 3's condensation and explanation are facially deficient. The condensation states that the Nevada Revised Statutes would "be amended to limit . . . damages which a plaintiff may recover in an action regarding professional negligence." The explanation states that the initiative would "limit noneconomic damages . . . to $350,000." NRS 41A.031, however, already limits noneconomic damages to $350,000, with two exceptions: gross negligence and exceptional circumstances shown by

clear and convincing evidence.[1] Neither the condensation nor the explanation accurately reflects that, if passed, the initiative would simply remove the two statutory exceptions to the existing $350,000 cap. Additionally, the explanation does not mention that third parties, such as Medicaid, private insurance, or workers' compensation, would no longer be permitted to recover expenses paid on behalf of a medical malpractice victim if the measure passes. One effect of this provision would be an increased burden on the state Medicaid fund, which consists of taxpayer dollars. It appears that the average taxpayer would find this information important in determining how to vote on this measure. Further, the explanation fails to apprise voters that joint and several liability has already been abrogated for noneconomic damages and does not indicate that abrogating joint and several liability for economic damages imposes the risk, to the injured plaintiff, of a defendant's nonpayment.[2]

Under NRS 293.250(5), the Secretary must prepare the condensation and explanation, which must be "in easily understood language and of reasonable length," by August 1 whenever feasible. This statutory provision contains no express standards for the Secretary's descriptions. Nevertheless, we have previously recognized that while it might be impossible to include all possible ramifications of a measure in

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[1]NRS 41A.031(2)(a) & (b).

[2]For example, the tortfeasor could have insufficient insurance or be judgment proof.

the explanation, the explanation should not omit pertinent information so as to become misleading.[3]

In addition, other courts reviewing similar parts of a ballot's language have held that this language must be neutral or impartial and must fairly summarize the key provisions of the initiative.[4] For example, the Ohio Supreme Court has held that the obligation to summarize an initiative implicitly requires an accurate summary.[5] If all aspects of a measure cannot be included because of length restrictions, then the summary must at least indicate that additional effects exist so that voters are aware that they need to look further for full information.[6] But the summary need not be exhaustive or contain the best language possible. According to the Missouri Court of Appeals, the important test is whether the language fairly and impartially summarizes the purposes of the

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[3]Nevada Judges Ass'n v. Lau, 112 Nev. 51, 59-60, 910 P.2d 898, 903-04 (1996).

[4]See Fairness & Acct. in Ins. Reform v. Greene, 886 P.2d 1338, 1346-47 (Ariz. 1994) (holding that the relevant statute required an "impartial" summary); Thirty Voters of Cty. of Kauai v. Doi, 599 P.2d 286, 289 (Haw. 1979) (holding that to be sufficient, the ballot must neither mislead nor advocate, but simply state the question clearly); Ward v. Priest, 86 S.W.3d 884, 891 (Ark. 2002) (stating that language must be intelligible, honest and impartial, must give voters a fair understanding of the issues presented and the scope and significance of the proposed changes, must "be free from misleading tendencies that, whether by amplification, omission, or fallacy, thwart a fair understanding of the issues presented," and cannot omit material information that "would give the voter serious grounds for reflection").

[5]Christy v. Summit Cty. Bd. of Elections, 671 N.E.2d 1, 4 (Ohio 1996).

[6]See Carson v. Myers, 951 P.2d 700, 704 (Or. 1998).

measure, so that the voter is not deceived or misled.[7] In addition, the burden is on the objector to demonstrate that the language is insufficient.[8]

We agree with these courts that, while perfection is not demanded, the language used must fairly and accurately summarize the initiative's key provisions so that the voters are informed and not misled. In this case, petitioners have demonstrated that the Secretary's condensation and explanation actually misinform the voters about the law that is subject to being changed and about what may occur if the initiative is approved. Consequently, these descriptions are deficient and cannot stand.[9]

We recognize that election laws must be liberally construed to effectuate the will of the electors,[10] and we appreciate the importance and "great political utility in allowing the people to vote" on a measure.[11] In this instance, however, in light of the misleading statements in the Secretary's condensation and explanation, the electors' will could be subverted on an important ballot question. Allowing a defectively

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[7]Bergman v. Mills, 988 S.W.2d 84, 92 (Mo. Ct. App. 1999); see also Ward, 86 S.W.3d at 891 (noting that language is sufficient if it fairly alleges the general purposes of the initiative and contains enough information to sufficiently advise voters of the proposal's true contents).

[8]Bergman, 988 S.W.2d at 92; Ward, 86 S.W.3d at 891.

[9]Nevada Judges Ass'n, 112 Nev. at 59-60, 910 P.2d at 903-04; Choose Life Campaign '90' v. Del Papa, 106 Nev. 802, 807, 801 P.2d 1384, 1387 (1990).

[10]NRS 293.127(1)(c).

[11]Las Vegas Chamber of Commerce v. Del Papa, 106 Nev. 910, 917, 802 P.2d 1280, 1282 (1990).

presented ballot question to proceed through the election process would serve no public or political good.[12] In the past, we have acted to remedy deficient ballot language, and we conclude that it is appropriate to do so now.[13]

We are aware that, given the short amount of time available to prepare ballots for the November 2004 election, our order places a burden on election officials throughout the state. Unfortunately, the Secretary of State has contributed to the instant emergency. First, the Secretary had a duty to accurately explain KODIN's effects. He did not do so. Second, he had a duty to prepare his explanation and condensation by August 1, if feasible.[14] KODIN's scheduled appearance on the November 2004 ballot has been public information since June 2003; it was certainly "feasible" for the Secretary to complete his explanation and condensation by August 1, 2004, the statutory deadline. Had he met the first duty, this petition could have been summarily denied. Even if he had met his second duty, the admittedly large burden placed on the election officials who must now print a revised ballot in a shortened time frame would have been avoided because the timing of our order would not have impacted the ballot's printing schedule. We regret the predicament that election officials across the state now face.

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[12]Inasmuch as the other arguments asserted in the petition concern disputes over factual accuracies, this court is an inappropriate forum to address these issues. Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 604, 637 P.2d 534, 536 (1981).

[13]See Nevada Judges Ass'n, 112 Nev. at 60-61, 910 P.2d at 903-04; Choose Life, 106 Nev. at 807, 801 P.2d at 1387.

[14]NRS 293.250(5).

Accordingly, we grant the petition in part. The clerk of this court shall issue a writ of mandamus compelling the Secretary of State to either (1) revise the condensation and explanation of ballot Question 3 so that they accurately reflect the proposed changes to Nevada law, if he determines that these revisions can be made in time to print the ballot, or (2) strike Question 3 from the 2004 ballot.[15]

It is so ORDERED.

Becker, J.
Becker

Gibbons, J.
Gibbons

Douglas, J.
Douglas

cc: Bradley Drendel & Jeanney
Gillock Markley & Killebrew
Robert H. Perry
Attorney General Brian Sandoval/Carson City

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[15]See, e.g., Eastmoore v. Stone, 265 So. 2d 517, 520 (Fla. Dist. Ct. App. 1972) (pointing out that mandamus lies to compel Secretary of State to perform his or her duties in compliance with the law); Fairness, 886 P.2d at 1348-49 (issuing writ of mandamus directing legislative council to draft impartial analysis); accord Redl v. Secretary of State, 120 Nev. ___, 85 P.3d 797 (2004).

SHEARING, C.J., with whom ROSE, J., joins, concurring in part and dissenting in part:

Although I agree with the majority's decision to direct the Secretary of State to either correct the inaccuracies in his condensation and explanation or remove Question 3 from the ballot, I would also direct the Secretary of State to either correct the inaccuracies in the arguments or leave them off the ballot altogether.

Although NRS 293.252 establishes that volunteer committees are responsible for preparing arguments in favor of or opposed to the ballot measure, the Secretary of State is required to review these arguments and to reject any factually inaccurate or libelous statements.[1] Additionally, the Secretary of State may revise the committee's language so that it is "clear, concise and suitable for incorporation in the sample ballot."[2] The voters are entitled to a clear, concise, and factually accurate argument for and against the initiative. The arguments of the proponents are being challenged in this case as being factually inaccurate. Most of the arguments put forth by the proponents are pure hyperbole. Many of the arguments are specious, extravagant, and misleading. The Secretary of State did not exercise his duty to correct the arguments.

The voters of Nevada are entitled to better information when they are called upon to make important decisions regarding the law and public policy of this state. Therefore, I would grant the petition for a writ of mandamus and require the explanation to be corrected or Question 3 to be removed from the ballot. I would also require that the arguments in

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[1]NRS 293.252.

[2]NRS 293.252(8).

support of and in opposition to the initiative be either deleted or corrected so that they are factually accurate. We are told that the ballots are being printed and that it is too late to make changes. Even if it is too late to make changes, it is not too late to delete Question 3 from the ballot. Since the Legislature set a target date of August 1 for the completion of the ballot statements and this completion was not accomplished until the beginning of September, it is disingenuous for the Secretary of State to argue that now it is too late for changes.

_____, C.J.
Shearing

I concur:

_____, J.
Rose

AGOSTI, J., concurring in part and dissenting in part:

I concur in part. I agree that the Secretary of State ought to be required to revise the explanation that accompanies the KODIN initiative ballot question because, as written, it is deficient. It must, even at this late date, be changed so that it is accurate, impartial and disinterested. The logistics and time difficulties that exist for correcting the sample ballots should not trump the need to correct substantial and misleading inaccuracies in the explanation meant to neutrally inform Nevada voters. For the sake of the publication of ballots in a timely fashion, the voters should not be misinformed.[1]

The explanation's current language deprives the voters of an adequate appreciation of some fundamental issues implicated by the KODIN initiative when they decide these issues with their vote. One might say that such is the nature of popular elections that we are never fully aware of all the issues. However, in this case, the Secretary has a duty to be accurate and informative in explaining the legal consequence of an initiative.[2] Necessarily, the explanation must be disinterested and

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[1]I do not imply either a motive of partiality or a neglect of duty on the part of the Secretary by joining the majority on this issue or by commenting here on my own assessment of the explanation in question. To be sure, the Secretary's explanation, as written, embodies his attempt to discharge his obligation to provide an explanation of reasonable length concerning a measure that addresses, as observed by Justice Maupin, some of the most difficult and complex legal doctrines existing in law, and the many substantial public policy considerations behind them.

[2]Nevada Judges Ass'n v. Lau, 112 Nev. 51, 59-60, 910 P.2d 898, 903-04 (1996); see NRS 293.250(5); see also Fairness & Acct. in Ins. Reform v. Greene, 886 P.2d 1338, 1346-47 (Ariz. 1994).

impartial.[3] This was not accomplished.[4] Additionally, as noted by the majority, the Secretary instigated the delay. He was to complete his task by August 1. This was not accomplished. Petitioners also delayed, but only in the sense that two weeks amounts to delay given the time constraints imposed by the pending election date. Unlike the Secretary, Petitioners are under no legal obligation to file a petition with this court by a date certain.

We quibble when we weigh the question of which party bears the greater fault for the no-win situation that now exists. This court's options are limited and all are bleak. Each choice is a Hobson's choice. If the ballots go out as currently written, the voters may not know the legal consequences of their vote on the KODIN initiative, because the Secretary's explanation leaves them misinformed. If this court orders the explanation to be rewritten, the potential for havoc on the entire election

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[3]It is for the proponents and opponents of the measure to argue the merits. NRS 293.252(5)(d).

[4]For example, the explanation fails to inform the public that $350,000 caps already exist to limit compensation to tort victims for their noneconomic losses. These caps are subject to two exceptions: a tort victim may receive more if a jury finds by clear and convincing evidence presented at trial that the tortfeasor has committed gross malpractice or if the jury finds by clear and convincing evidence presented at trial exceptional circumstances to justify an award in excess of the cap, all per NRS 41A.031. By failing to inform the public that this restraint against excessive jury awards currently exists in the law, the Secretary suggests that the initiative creates a power to limit noneconomic damages, implying that this power does not currently exist in law. As noted by the Arizona Supreme Court in Fairness & Accountability in Insurance Reform v. Greene, 886 P.2d 1338 (Ariz. 1994), "[a] disinterested analysis would not suggest the creation of a power that already exists."

process is very real. This concern implicates not just the KODIN question, but every national, statewide and local race and question because they all appear on the same ballot. If we offer the Secretary the option of rewriting or pulling the question and he elects to pull the question, we nullify the process and arduous work it took to get the initiative on the ballot. In effect, we punish the voters for the human mistakes that brought us to this perilous point. Not one of these options is palatable. The court has been placed in the position of having to respond at the point when the issues are at critical mass and therefore we must do so swiftly, so swiftly that we are without the benefit of the measured and thoughtful review these issues warrant.

In the end, the majority chose the path of apparent least harm. I cannot quarrel with the first aspect of that choice and so I concur. But I do so with no enthusiasm and with the gnawing sense that if the Secretary must at this late date clarify the language of the explanation, the public is being cheated by the havoc that is certain to follow as all affected entities scramble to address the hardships imposed by the new deadlines for printing new ballots. I do quarrel with the other aspect of that choice.[5] I dissent with the certainty that if the question is pulled from the ballot, the voters are being cheated.

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[5]The majority has not addressed Petitioner's complaint that the arguments in favor of passage are inaccurate. Chief Justice Shearing would have those revised as well. I disagree with Chief Justice Shearing on this point as I believe the voters will understand the arguments printed in the sample ballot for and against passage of the initiative are advocacy and will evaluate them as such.

First, they will be deprived of their constitutional right to vote on the initiative in the upcoming election.[6]

Second, I am not certain if the majority intends to defer the question to 2006, at the Secretary's option, or dismiss the question entirely, at the Secretary's option. Dismissing the question in its entirety is purely unacceptable. By deferring the question until the 2006 election, many new legal issues will come into play. For example, the 2003 Legislature took no action on this measure, which is how it ends up on the ballot this year.[7] We enter uncharted territory when we turn over to a newly composed 2005 Legislature the opportunity to ignore the measure, pass it or modify it. If the 2005 Legislature does nothing, the measure will return to the ballot posed as the same question that is now pending. Other than the unacceptability of waiting two years to vote on this question, this would not be such a bad result. But if the 2005 Legislature modifies the measure, one wonders, does the initiative return to the ballot in 2006 as the pure question that it is now, or as a choice between it and the modified version passed by the Legislature in 2005.[8] After all, the 2005 Legislature is not the one contemplated by the Constitution to respond to the initiative.

Third, those who signed the petition which created this initiative had every right to expect that if the 2003 Legislature did not adopt the measure, it would be placed on the ballot in November, 2004.

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[6]Nev. Const. art. 19, § 2(1).

[7]Id., § 2(3).

[8]Id.

Fourth, while this court may strike the language of the explanation if it falls short of the statutory mark, I do not relish the implication that this court or any court will become the supervisor of the Secretary's work. We are to return the explanation to the Secretary. We may tell him to clarify the language. We must presume that in short order he will discharge his legal duty and craft an appropriate explanation. We should not expect, the parties should not expect, and the public should not expect this court to peer over his shoulder and micro-manage his responsibilities. We must trust him to do his job in a timely fashion so the question can be presented to the voters in November.

Nevadans, in my opinion, are better served if the question appears in November 2004, accurately explained by the Secretary. I disagree with giving the Secretary the option of pulling the question altogether. I believe that path leads to too much mischief.

Agosti, J.
Agosti

MAUPIN, J., dissenting:

While the Secretary of State's condensation and explanation of the "Keep Our Doctors in Nevada" initiative should be clarified, the petitioners and the Secretary have left us with insufficient time to craft a remedy that adequately addresses the deficiencies, which are either noted by the majority or noted below by me. Any relief at this point will inevitably and seriously disrupt the process of printing and mailing election ballots to Nevada voters. Accordingly, we should deny this petition. Most importantly, we should not alternatively order that the initiative be removed from the ballot.

At the outset, I wish to stress that the Secretary was faced with providing an explanation of "reasonable length" of a measure that addresses some of the most difficult and complex legal doctrines in the law, and the myriad public policy considerations behind them. Having said that, I agree that the Secretary's explanation falls considerably short in several respects. First, as stated by the majority, the explanation inaccurately implies that the measure, if passed, creates a limitation upon non-economic damages in medical malpractice cases. Instead, the initiative seeks to eliminate statutory exceptions to an already existing limitation. Second, the explanation only obliquely discusses the initiative's proposals to eliminate joint and several liability of multiple defendants in medical malpractice cases, and to allow malpractice defendants to admit evidence that the plaintiff has received benefits from a collateral source. The voter is not clearly advised of the implications of abrogating joint and several liability in these matters, including that the measure allows a physician found liable for malpractice to avoid payment of damages that he or she has in part caused. Further, the voter is not

advised in the condensation and explanation that the abrogation of the collateral source rule does not in any respect prevent double recovery. The problem is that an adequate discussion of this highly complex ballot initiative cannot be provided for inclusion on the ballot in time to deal with the overarching consideration in such matters, which is that the people of this state get to make their choice.

We should not, in any case, order that the measure be striken from the ballot in the event the Secretary is unable to amend the condensation and explanation in time for printing. As stated by the majority, "election laws must be liberally construed to effectuate the will of the electors." That the editorial explanations and arguments may be misleading does not prevent the citizens of the state from reading the measure itself and obtaining information for and against it. I am acutely aware of the complexity of the choices facing the voters in connection with this particular initiative. Notwithstanding these complexities and the problems presented via this petition, the initiative must stand or fall within the crucible of the election process.

Maupin, J.

Maupin