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

UBER SEXUAL ASSAULT SURVIVORS FOR LEGAL ACCOUNTABILITY and NEVADA JUSTICE ASSOCIATION, Plaintiffs, vs. UBER TECHNOLOGIES, INC., a Delaware corporation; MATT GRIFFIN, JOHN GRIFFIN, SCOTT GILLES, and TIA WHITE, individuals; "NEVADANS FOR FAIR RECOVERY," a registered Nevada political action committee; and FRANCISCO AGUILAR, in his official capacity as Nevada Secretary of State, Defendants.	Case No. Dept. No. **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF CHALLENGING INITIATIVE PETITION S-04-2024** **Priority Matter Under NRS 295.061(1)**

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JURISDICTION

1. This action challenges an initiative petition filed with the Secretary of State on March 18, 2024 by "Nevadans for Fair Recovery," a new political action committee created by Uber Technologies, Inc. This Court has jurisdiction over the plaintiffs' claims under NRS 295.061 and has jurisdiction to grant relief under NRS 30.030, 30.040(1), and 33.010.

INTRODUCTION

2. Uber wants to prevent Nevadans who have been sexually assaulted, harassed, or otherwise injured from getting the representation they need to sue the company in court. For years, women who were sexually assaulted by Uber drivers have been trying to hold the company accountable for prioritizing its profits over their safety. And, for years, Uber blocked lawsuits by survivors of sexual assault by forcing them out of court and into mandatory, confidential arbitration. Now that Congress has made that maneuver illegal—and as the company faces hundreds of sexual-assault claims nationwide—Uber has hit upon a new strategy for silencing survivors. Its plan is to rig the civil justice system—first in this state and then, if it succeeds here, in others. Uber's ballot initiative would allow Uber to hire the best and most expensive attorneys, with no limits on *its* lawyers' fees, while imposing unprecedented limits on ordinary Nevadans' ability to obtain legal representation.

3. Under Uber's proposed statute, it would be illegal for any attorney to "contract for or collect a fee contingent on the amount of recovery for representing a person seeking damages in a civil case in excess of twenty percent of the amount of recovery." But Nevada courts know that "contingency fees allow those who cannot afford an attorney who bills at an hourly rate to secure legal representation" and thus "allow a client without financial means to obtain legal access to the civil justice system." *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 559 (Nev. App. 2018).[1]

[1] Unless otherwise noted, all internal quotation marks, citations, alterations, brackets, and ellipses have been omitted from quotations throughout this complaint.

4. Most Nevadans have little hope of going up against a company like Uber without an attorney. And most Nevadans don't have the money to pay for a lawyer out of their own pocket. Their only hope of obtaining legal representation is to hire an attorney on contingency, who they will have to pay only if they are able to eventually obtain relief. Because lawyers take on substantial risks and costs in suing companies as powerful and aggressive as Uber—which have all the resources in the world to draw out litigation and play hardball—many charge the industry average rate of between 33% to 40% just to stay afloat. A contingency fee is the only way that ordinary people can go toe-to-toe with companies like Uber and vindicate their rights. It is their only "key to the courthouse." Kritzer Decl. ¶ 34.

5. That's exactly why Uber now has contingency fees in its sights. As more and more sexual-assault survivors' claims get consolidated into a nationwide case, Uber wants to stop survivors from hiring lawyers. Its proposal "would impose by far the most extreme barrier on people's ability to hire counsel of any state in the nation." Hinkle Decl. ¶ 4. As the world's leading expert on contingency fees explains, the proposal "would sharply decrease the availability of legal services in Nevada." Kritzer Decl. ¶ 6. Innumerable everyday Nevadans would be worse off, from sexual-assault survivors to police officers injured keeping the rest of us safe.

6. And Nevada taxpayers would lose out too. When people aren't compensated for their injuries by the parties responsible (like Uber), that ends up depriving Nevada Medicaid of millions of dollars in healthcare reimbursements that it would otherwise receive. As the Nevada Coalition of Legal Services Providers explains, this would have "a profound and lasting impact" on the State's treasury and, "in human terms, the loss of access to justice for Nevada families would be enormous." Sasser-Norman Decl. ¶ 48. No wonder Uber's proposal doesn't disclose this.

7. If Nevada voters knew what was really at stake with Uber's proposal, they would reject it out of hand. So Uber has tried to do what it has done in other states: create "voter confusion" through "obfuscation." *Koussa v. Att'y Gen. of Mass.*, 489 Mass. 823, 829–30, 833 (2022) (striking Uber's initiative

from the ballot). It created a PAC with a misleading name, funded a misleading PR campaign, and even made misleading statements about which groups support the proposal. And it announced that the initiative was designed to "put victims first." But its conduct reveals that, as advocates for survivors put it, "Uber has consistently put survivors of sexual assault last." London Decl. ¶ 31.

8. Fortunately, Nevada law has safeguards against these kinds of efforts to deceive the electorate. If the public is misled about the purpose or effects of an initiative, instead of promoting democracy, "the electors' will could be subverted on an important ballot question." *Jones v. Heller*, 120 Nev. 1256, No. 43940, at 4 (Nev. Sept. 18, 2004) (unpublished order). The Nevada legislature has entrusted courts with the important responsibility of guarding against this anti-democratic result. This is just such a case. This isn't the first time Uber has tried to sneak through initiatives to stop 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.

PARTIES

9. Uber Sexual Assault Survivors for Legal Accountability is an association of survivors—former Uber passengers who were sexually assaulted or harassed by their Uber drivers—and the advocates who seek justice on their behalf. Together, they seek to hold Uber accountable in court for its repeated failure to implement appropriate safety precautions to protect its passengers. They file this action to ensure that victims of sexual assault and sexual harassment who cannot afford to pay for lawyers out of their own pockets will continue to have access to zealous and competent legal representation in Nevada.

10. The Nevada Justice Association is an association of over 1,200 lawyers and judges who strive to improve Nevada's civil justice system and to ensure that the people of Nevada continue to have undiminished access to the courts. The lawyers of NJA represent injured people in a wide range of civil actions, from antitrust and civil rights to personal injury and sexual assault.

11. Uber Technologies, Inc., is a Delaware corporate with its principal place of business at 1515 Third Street, San Francisco, California. Upon information and belief, Uber directs and funds the "Nevadans for Fair Recovery" political action committee and the proposed "Nevadans for Fair Recovery Act" initiative petition.

12. Matt Griffin is a lawyer and lobbyist for Uber with the Griffin Company in Carson City, Nevada. He is listed as the secretary and registered agent of the "Nevadans for Fair Recovery" PAC and a proponent of the challenged petition.

13. John Griffin is a lawyer and lobbyist for Uber with the Griffin Company in Carson City, Nevada, and a proponent of the challenged petition.

14. Scott Gilles is a lawyer and lobbyist for Uber with the Griffin Company in Carson City, Nevada, and a proponent of the challenged petition,

15. Tia White is the President of Operations with the Griffin Company in Carson City, Nevada, Uber's lobbying firm. She is listed as the treasurer of "Nevadans for Fair Recovery PAC" and a proponent of the challenged petition.

16. "Nevadans for Fair Recovery" is a newly formed Nevada political action committee organized for the specific purpose of advocating for the challenged petition, S-04-2024, titled the "Nevadans for Fair Recovery Act."

17. Francisco Aguilar is the Nevada Secretary of State and is sued solely in his individual capacity. The Secretary of State is "the Chief Officer of Elections for this State" and "is responsible for the execution and enforcement" of Nevada's election laws. NRS 293.124(1). The Secretary's duties also include qualifying initiatives for submission to the Legislature and the electorate and disqualifying initiatives that are determined to be invalid.

FACTUAL ALLEGATIONS

Uber's sexual assault problem

18. Uber has a sexual assault problem. The company now faces hundreds of civil suits, with more sure to come, by survivors who were sexually assaulted by their Uber drivers.

19. Approximately 250 such cases have been consolidated in a nationwide multidistrict litigation (MDL) against Uber styled *In re Uber Technologies, Inc. Passenger Sexual Assault Litigation*. London Decl. ¶ 2. That number is expected to grow substantially as hundreds more cases get transferred to the MDL (in federal court in San Francisco) from states across the country, where similar incidents of sexual assault and sexual harassment by unvetted Uber drivers continue to occur with troubling frequency. *Id.*

20. Nevada is no exception. Both in the MDL and in state court, Uber faces numerous civil suits by survivors of sexual assault or harassment that took place in Nevada. London Decl. ¶¶ 22–24; *see generally* Lansdown Decl. (collecting complaints). Recent cases in Nevada include:

21. An Uber driver who brutally raped his passenger, a twenty-year-old woman visiting Las Vegas, after she fell asleep during an Uber ride. When she awoke, she pleaded for him to stop. He ignored her pleas, strangled her until she was unconscious, then dropped her off at her destination and threw her, her clothes, and her bag out of his car. Lansdown Decl. ¶¶ 2–3; London Decl. ¶ 23.

22. An Uber driver who stalked and harassed a woman for months after her Uber ride, visiting her workplace numerous times, to the point that she had to get a restraining order. Lansdown Decl. ¶ 8. Uber did nothing to help her. *Id.*

23. An Uber driver—later revealed to be a registered sex offender—who made repeated crude comments about three young women's physical appearance, insisted they smell a bottle of unknown liquid and, when they declined to do so, sprayed one of the women, causing her to feel woozy and fall asleep. Her sister woke her up, they escaped the vehicle, and were treated by paramedics. Lansdown Decl. ¶ 7; Jacob Leavitt Decl. ¶¶ 4–8.

24. An Uber driver who picked up a Nevada woman at the Cosmopolitan, dropped her off at her home, then returned an hour later and entered her home as she slept. As she awoke, the Uber driver held her arms back and began raping her. She kept telling him to stop, trying to kick him away. But he continued to overpower her and sexually assaulted her without using any form of protection. Lansdown Decl. ¶ 5; London Decl. ¶ 24.

25. An Uber driver who facilitated the abduction and physical and sexual assault of a 14-year-old girl. Lansdown Decl. ¶ 9.

26. In these cases and others, survivors need legal representation to go up against a company as large and powerful as Uber. Contingency fees allowed these survivors to retain counsel that could bring civil cases against Uber seeking damages for the company's failure to implement appropriate safety precautions. Jacob Leavitt Decl. ¶¶ 2–3, 12.

27. Unfortunately, these episodes are far from isolated. And they come as no surprise to Uber. Because Uber's transportation model requires riders to get in cars with complete strangers, in many cases alone and at night, sexual assaults have always been a known and foreseeable risk.

28. In 2019, under mounting public scrutiny, Uber admitted to receiving reports of 5,981 sexual assaults (in five categories) in the United States in the preceding two years. London Decl. ¶ 15. These included 235 rapes, 280 attempted rapes, 1,560 groping incidents, 376 instances of unwanted kissing of the breast, buttocks, or mouth, and 594 reports of unwanted kissing to another body part. *Id.* And these numbers were only the tip of the iceberg because Uber reports data in certain categories and withholds the rest. London Decl. ¶ 16.

29. Two years ago, Uber acknowledged that, as a consequence of the gaps in its background checks, "we expect to continue to receive complaints from riders and other consumers, as well as actual or threatened legal action against us related to Driver conduct."[2]

30. Unlike the taxi industry, Uber conducts background checks using only the information a driver provides. London Decl. ¶ 8. It doesn't use biometric information, like fingerprints, and it doesn't check the FBI database used by the taxi industry. *Id.* When some states performed their own background checks, 12–15% of drivers who were eligible under Uber's standards flunked the official background checks. *Id.*

31. Despite their known inadequacy, Uber relies on these flawed background checks as its sole method for screening. London Decl. ¶ 9. It doesn't meet its drivers in person or online. It doesn't interview them. It doesn't require any references. It doesn't contact prior employers. There are no drug and alcohol tests. There are no exams.

32. To make things worse, Uber collected a "Safe Rides Fee" on hundreds of millions of rides and made hundreds of millions in revenue as a result. But it never earmarked the money collected for improving safety. The actual purpose of the "Safe Rides Fee" was to "add $1 of pure margin to each trip." London Decl. ¶ 11. As one former Uber employee said, "[w]e boosted our margins saying our rides were safer. … It was obscene." *Id.*

33. Uber knows that its transportation system poses a particularly high risk for intoxicated riders, especially intoxicated women. Nonetheless, Uber's advertising disproportionately targets women, with dedicated ad campaigns devoted to "driving women's safety forward," and markets its rides as a safe option for intoxicated riders. London Decl. ¶ 12. Uber engages in joint marketing with alcohol

[2] Uber 2022 Annual Report 18 (Form 10-K) (Feb. 21, 2023), https://perma.cc/V8DP-PKTP.

manufacturers and local bars, telling women that it is fine to have another drink because they have a ride home. *Id.*

34. Uber knew this marketing was false. In the past, Uber gained riders' trust by advertising "the safest rides on the road," saying that it sets "the strictest standards possible" and that it "aims to go above and beyond local requirements" with "gold standard" and "industry leading" background checks. London Decl. ¶ 13. Even after it paid more than $50 million to settle lawsuits based on this marketing, Uber never told riders the truth. *Id.* Uber continues to mislead customers about its standards, background checks, and safety record.

Uber's past efforts to write its own rules and silence survivors

35. In jurisdiction after jurisdiction, including Nevada, Uber's strategy has been the same: It breaks the law, then writes its own rules. *See generally* Mike Isaac, *Super Pumped: The Battle for Uber* (2019).

36. Uber refuses to take any responsibility for allowing these assaults to occur and has instead prioritized preventing survivors from suing the company.

37. Uber has aggressively lobbied for new laws, ballot initiatives, and regulations providing that Uber is merely a technology platform, or a middleman between riders and drivers, and that it does not control, direct, or manage its drivers and so cannot be held culpable for what occurs during a ride. London Decl. ¶ 18. Uber spends millions of dollars annually in the U.S. alone on these lobbying efforts. *Id.*

38. Uber routinely ignores existing laws and regulations whenever it enters a new market, enabling itself to quickly onboard many drivers. London Decl. ¶ 19. This allows it to offer a service that is immediately cheaper and more convenient than existing options, and therefore popular. *Id.* It then harnesses this popularity to mobilize the public to oppose enforcement of existing laws against Uber and to support new legal standards that Uber writes. *Id.*

39. In Nevada, Uber leveraged its popularity to exempt itself from background-check requirements, among other safety measures, imposed on taxi services. *See* Emily L. Dyer, Note, *Need a Ride? Uber: The Trendy Choice That Could Turn Threatening*, 17 Nev. L.J. 239, 246–47 (2017). The implications of Uber's flouting of the law are especially grave in Nevada. "Nevada's unique market and customer base call for more intense safeguards. The state's all-night lifestyle encourages many vulnerable passengers to use Uber's convenient service. The allure of using a mobile application to find a ride home, along with the non-cash payment method, makes Uber an ideal choice for both tourists and locals who have taken full advantage of the Vegas nightlife." *Id.* at 254.

40. Indeed, Uber has specifically targeted Nevada's unique lifestyle through advertising that encourages customers to "drink up, and Uber on." *Id.* at 254.

41. For years, Uber was successful in keeping survivors quiet and out of court. Until recently, Uber required confidentiality as a condition of settlement with sexual assault survivors, effectively forcing them to stay quiet so that the public would not learn about the true risks of riding with Uber. London Decl. ¶ 25; *see also, e.g.*, Watkins Decl. ¶¶ 6–7.

42. And when survivors chose to come forward, Uber blocked them from going to court by enforcing a forced arbitration clause in the fine print of its app. London Decl. ¶ 25. It stopped doing so for claims of sexual misconduct only after public outcry at the height of the #MeToo movement. London Decl. ¶ 26.

43. On March 3, 2022, President Biden signed into law the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, Pub. L. No. 117-90, 136 Stat. 26 (2022), which prohibits Uber from coercing survivors of sexual harassment or assault into binding arbitration. Despite Uber's lobbying, Congress passed this legislation on a bipartisan basis in both the House and the Senate.

44. Now, Uber has no choice—it must face sexual-assault survivors' claims publicly in court, not through secret settlements or private arbitration. But now that survivors can claim their day in court,

Uber is going after them with every trick in the playbook used to demean and attack survivors of sexual assault, including routinely using the fact of their intoxication to question their credibility. London Decl. ¶ 28.

45. And Uber continues to seek yet more ways to silence, divide, and conquer survivors—by trying to force them out of their chosen forum, and seeking to prevent them from even participating in coordinated proceedings where they can find strength and comfort in numbers. London Decl. ¶ 28 & Ex. E (Uber's latest motion to enforce its "non-consolidation clause" in the terms of use of its app).

46. But because Uber can no longer block sexual-assault survivors from going to court, it has also shifted its energy to making it as difficult as possible for them do so. In 2022, Uber backed another ballot initiative, in Massachusetts, that deployed "murky language . . . bur[ied]" in the initiative to preclude people from suing Uber for negligence or assault by its drivers. *Koussa*, 489 Mass. at 833, 838. The Massachusetts Supreme Judicial Court unanimously struck it from the ballot. *Id.*; *see* Nate Raymond, *Massachusetts court blocks gig worker ballot measure backed by Uber, Lyft*, Reuters (June 14, 2022), https://perma.cc/HQD5-49H8. Uber now appears to be employing a similar strategy to shield itself from suit in Nevada.

Uber's latest effort to prevent people from suing the company

47. On March 18, 2024, a group created by Uber called "Nevadans for Fair Recovery PAC" filed a proposed initiative petition. App. Ex. 1 (Initiative Petition). The officers of the PAC are all lobbyists for Uber. App. Ex. 1 (PAC Registration Form).

48. Despite being bankrolled by a massive corporation that is currently fighting to suppress hundreds of lawsuits by sexual assault survivors, the stated purpose of the PAC is "[t]o support issues related to victim recovery." *Id.*

49. The proposed initiative would amend 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.

50. In addition to imposing a 20% cap on plaintiffs' attorneys' fees, the proposed statute would therefore also change the formula for calculating a recovery. The current contingency fee cap for medical malpractice actions states: "For the purposes of this section, '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 and general and administrative expenses incurred by the office of the attorney are not deductible disbursements or costs." NRS 7.095(3). While section 2.3 of the new initiative parrots the first sentence, it drops the entire second sentence.

51. The filing also includes a proposed "description of effect," App. Ex. 1 (Description of Effect), 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.

52. Uber's lobbyists then launched a media campaign in support of the proposal.

53. A press release containing a series of similarly worded quotes 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." App. Ex. 2 (Press Release). The initiative thus supposedly "protects victims, reduces paydays for some of the richest attorneys in the country, while helping reduce costs for Nevadans." *Id.*

54. 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"—a New York-based lobbyist who unironically warned about a system where large sums of money are spent on "lobbying." *Id.*

55. And while the press release portrayed the initiative as already 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.'"[3]

Uber's proposal misleads Nevadans about its scope and effect.

56. To prevent proponents of initiatives from hijacking the process by misleading and confusing voters, Nevada law imposes two key requirements on initiatives and petitions.

57. First, an initiative may "[e]mbrace but one subject and matters necessarily connected therewith and pertaining thereto." NRS 295.009(1)(a). This is violated if the initiative's purpose "fails to provide sufficient notice of the wide array of subjects addressed … or the interests likely to be affected by it." *Nevadans for Prop. Rts. v. Sec'y of State*, 122 Nev. 894, 909 (2006).

58. Second, a petition must include "a description of the effect of the initiative." NRS 295.009(1)(b). This must summarize "what the initiative is designed to achieve and how it intends to reach those goals." *Educ. Freedom PAC v. Reid*, 138 Nev. Adv. Op. 47, 512 P.3d 296, 304 (2022). "The importance of the description of effect cannot be minimized, as it is what the voters see when deciding

[3] Gabby Birenbaum, et al., *Indy Elections: When in the world is Captain Sam Brown*, The Nevada Independent (Mar. 26, 2024), https://perma.cc/MHM7-3PBJ.

whether to even sign a petition." *Coal. for Nevada's Future v. RIP Com. Tax, Inc.*, 2016 WL 2842925, No. 69501 (Nev. May 11, 2016) (unpublished disposition).

59. Uber's initiative and petition violate both of these requirements. Because Uber knows that Nevada voters wouldn't support a plan to make survivors of sexual assault play by different rules than multi-billion-dollar corporations, the initiative is designed to hide its true scope. And because Uber knows that Nevadans don't want to shift costs for corporate wrongdoing from the companies to the taxpayer, Uber has crafted its initiative to hide these effects. But the initiative process is designed to make sure the will of the people is reflected in lawmaking, not to allow big companies to sneak through initiatives that say one thing and do another.

Uber's proposal puts corporations first and victims last.

60. Uber touts its proposal in altruistic terms. Its press statements declare that the company bankrolled the proposal out of a desire to "put victims first"—helping them maximize their recoveries for the injuries caused by Uber. App. Ex. 4 (Las Vegas Review-Journal Article). Stated another way, whereas Uber believes that *it* should be able to pay its own attorneys whatever it wants, it takes the position that its adversaries in court—sexual-assault survivors and other victims of its wrongdoing—would be best served by laws that sharply limit their fee arrangements with attorneys. A 20% fee cap would make its victims better off, says Uber, because it would put more money in their pockets.

61. But the proposal is sure to have the opposite effect—just as Uber intends. That is because, although the proposal purports to focus exclusively on how to divvy up the proceeds of a case after it has ended, the proposal is actually about something very different: preventing victims from even being able to bring their claims and hold corporations accountable in the first place.

62. "Contingent fee agreements between attorneys and their clients generally allow a client without financial means to obtain legal access to the civil justice system." *O'Connell,* 134 Nev. at 559 (Nev. App. 2018). The Nevada Supreme Court and courts across the country have accordingly

recognized the "public policy justifications supporting contingency-fee agreements." *Capriati Constr. Corp. v. Yahyavi*, 137 Nev. 675, 680 (2021); *see also Munger, Reinschmidt & Denne, L.L.P. v. Lienhard Plante*, 940 N.W.2d 361, 366–67 (Iowa 2020) (contingency fees "enable persons who could not otherwise afford counsel to assert their rights") (compiling cases).

63. Most ordinary people couldn't hope to take on a big company unless "someone else was willing to front the funds for attorneys and fees," which in the case of contingency fees is the attorney themselves. *In re Abrams & Abrams, P.A.*, 605 F.3d 238, 246 (4th Cir. 2010). Contingency fees are therefore "the key to the courthouse door" and courts would commit legal error "in failing to consider the access to the legal system that contingency fees … provide." *Id.*

64. And because contingency fees are necessary for many ordinary people to obtain counsel, "reducing them would impair claimants' ability to secure representation." *Abrams*, 605 F.3d at 245 (quoting *Wells v. Sullivan*, 907 F.2d 367, 371 (2d Cir.1990)). That is because "[s]adly, a plaintiff sometimes has little to offer a lawyer other than his personal plight." *Id.* "As an advocate before the Kentucky Supreme Court noted as early as 1823, in the absence of contingency fees a client 'may not have any thing else to give, and without the aid of the matter in the contest, he can never sue for his right, not having otherwise the means to employ counsel.'" *Id.* (quoting *Rust v. Larue*, 14 Ky. (4 Litt.) 411, 421 (Ky. 1823)).

65. The predictable effects of Uber's proposal are detailed in a declaration 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 explains that, contrary to Uber's public messaging, Uber's proposal "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.

66. The reasons for this, Dr. Kritzer explains, are the same reasons that courts have recognized for decades: 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. Kritzer Decl. ¶ 33. Even those who could afford to pay an attorney by the hour would often "be unwilling (or unable) to take the risk that they might obtain no recovery or the recovery that they do obtain will be less than their legal expenses." *Id.* He therefore agrees that a contingency fee is thus the "key to the courthouse" for most people. Kritzer Decl. ¶ 34. It is their only way to obtain legal representation because it is the only arrangement that meets all three of their needs at once: providing them not only with legal services, but also with much-needed financing and insurance services. *See* Kritzer Decl. ¶¶ 5, 22.

67. A lawyer will agree 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. Kritzer Decl. ¶ 22. The percentage dictated by the market (typically between 33% and 40%) is enough in many cases. Cut that number in half, however, and the calculus would change dramatically. Kritzer Decl. ¶¶ 41–42.

68. A simple hypothetical makes this clear. Uber says that the proposal benefits victims because it gives them a larger share of the recovery. On that logic, the proposal would be even more victim-friendly if it capped the fees at 10% or 5% (or better yet, 1%). But it is self-evident that a cap of 1% or 5% would not just place a *limit* on contingency-fee arrangements; it would eradicate them altogether. And that it is exactly what Uber's proposal is designed to do for many cases.

69. The proposal, then, would not simply reduce *the attorneys'* share of any recovery at the conclusion of a case. It would, as Dr. Kritzer explains, "reduce fees to such an extent that it would not be economical for attorneys to represent most clients"—*at the outset*—"in a wide range of cases where people have been harmed or their rights have been violated." Kritzer Decl. ¶ 6. "That would sharply decrease

the availability of legal services in Nevada because law firms could not handle a large proportion of the current cases that they handle on a contingency-fee basis, and most potential clients would not be able to proceed if required to pay their attorney on an hourly-fee basis." *Id.*

70. This conclusion is echoed by another contingency-fee expert, conservative scholar Brian Fitzpatrick. As Professor Fitzpatrick explains, Uber's proposal "is likely to reduce the number of meritorious suits against companies like Uber because there will be some suits for which the difference between, for example, a 33% and 20% contingency fee will make it unprofitable for a lawyer to file" suit. Fitzpatrick Decl. ¶ 6. Hence, "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." Fitzpatrick Decl. ¶ 5. And "even if the proposal would not disincentivize private lawyers from altogether prosecuting a case, it will diminish their incentives to invest time and money in cases, which might again leave victims worse off on net." *Id.*

71. "None of this," Professor Fitzpatrick points 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. Fitzpatrick Decl. ¶ 8. "It is their lives and their money," which "is why we usually trust voluntary market transactions to set prices in modern economies rather than central planners." *Id.* That is especially true when the central planner is a company that is far "more likely to be sued by people who hire lawyers on contingency than to hire lawyers on contingency" itself. Fitzpatrick Decl. ¶ 9. Uber, of course, "does not want to maximize plaintiffs' net recoveries; it wants to *minimize* their recoveries." *Id.* Naturally, its proposal would do exactly that.

72. Just how effective would its proposal be at eliminating legal services for ordinary Nevadans? 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—give some indication of the answer.

73. One attorney, for instance, states that in his experience representing sexual-assault survivors, Uber's proposal "would make it nearly impossible to take on cases against rideshare companies when their drivers sexually assault passengers," even if the facts are egregious. Hyman Decl. ¶ 11. His firm would be forced to stop taking these cases "on a contingency-fee basis because 20% is insufficient to cover [the] time spent, costs advanced, and [nonrecovery] risk." Hyman Decl. ¶ 10. The firm could take such cases only for an hourly fee. *Id.* But its clients "are usually lower income, blue-collar workers, or people who cannot afford to hire an attorney on an hourly basis." Hyman Decl. ¶ 7. And "few, if any," would be "willing to consider paying hourly" even if they could afford it, as they would be stuck with the entire bill and no recovery if the company prevails in court. Hyman Decl. ¶ 10.

74. Others who frequently represent survivors of sexual assault or harassment share in this opinion. One attorney states that, if Uber's proposal were to become law, his "firm would take few, if any, of the more factually complex cases with liability disputes," including cases on behalf of survivors of "sexual assault and harassment," who typically cannot pay by the hour. Watkins Decl. ¶¶ 4, 13. Another 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" were the proposal to take effect. Mausert Decl. ¶¶ 5–7. That would have a devastating effect on many Nevadans, because as it stands, "[a]lmost every attorney in northern Nevada who advertises in the field of sexual harassment *provides representation to employers, not employees*." Mausert Decl. ¶ 6; *see also* Morris Decl. ¶¶ 11–20 (attorney testifying that, if the proposal were passed, her firm could no longer take many sexual-assault cases because it would be cost-prohibitive to do so).

75. So, to use the words of another attorney who specializes in this area: Uber's proposal "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. 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.* In his view, "that is exactly why Uber is proposing this initiative now—it wants survivors to be silenced." *Id.* And he would know: His firm currently represents a person who was drugged in Nevada by an Uber driver who was a registered sex offender—a fact that even a minimally adequate background check would have uncovered. Jacob Leavitt Decl. ¶¶ 4–8.

76. Yet it is not just sexual-assault survivors who would be affected by Uber's sweeping proposal. A broad coalition of advocates representing diverse interests—encompassing leaders of police unions, legal-aid attorneys, patent attorneys, and even attorneys who have spent their careers litigating on behalf of insurance companies—have come together to voice their concerns about the proposal's effects on the people of the state. They all tell a similar story: that most people who are in need of legal services are ordinary Nevadans in a particularly vulnerable position; that unlike the Ubers of the world, these people cannot afford to pay a lawyer by the hour to represent them, running the risk of being stuck with legal bills if they do not prevail; that contingency fees are therefore the only way they can obtain legal representation; and that Uber's proposal would have a dramatic effect on their ability to find representation.

77. The President of the Reno Police Protective Association, for example, explains how police officers who are injured in the line of duty will often "have modest and low-value workers compensation claims." Waddle Decl. ¶ 10. These officers "will be significantly harmed" by the proposal because their ability to find an attorney will be "significantly limited." *Id.*

78. The attorneys who represent them underscore the point. One 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 the firm would have to shift to an hourly billing

structure for many cases, which "isn't anywhere in the realm of possibility for most working men and women in Nevada." Mills Decl. ¶¶ 3–4, 6, 11. Other workers-compensation attorneys paint a similarly dire picture. *See, e.g.*, Kampschror Decl. ¶¶ 6, 8 ("[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"—"making it impractical to represent injured workers," "decimat[ing] the Workers' Compensation practice," and "leav[ing] injured workers in a far worse position if they have little to no access to justice."); Gallagher Decl. ¶ 7 ("I don't know of any lawyers who would represent clients [in workers' compensation cases] under [a 20% cap]—it is just not feasible.").

79. 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" if the proposal were to become the law. Ellis Decl. ¶ 12. They "may even be unable to continue operating." *Id.*; *see, e.g.*, Hicks Decl. ¶ 16 ("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."); Chumbler Decl. ¶ 7 ("[T]his initiative would put my firm out of the business of helping injured clients. It would either go out of business entirely or I would have to shift my practice to a different area of law."); Jones Decl. ¶ 8 ("[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."); Cameron Decl. ¶ 6 ("[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."). Moss Decl. ¶ 7 (testifying that the firm would abandon "the majority[] of our practice" and no longer "handle cases involving victims of medical negligence, dangerous products and most cases involving dangerous conditions on property"); Mainor Decl. ¶ 7 ("My practice would easily be cut in

half, at least."); Granda Decl. ¶ 11 ("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.").

80. Other types of legal services, too, would dry up. Landowners whose property was seized by the government would have difficulty finding a lawyer to represent them. *See* James Leavitt Decl. ¶ 8 ("[T]his initiative could prevent most landowners (who cannot afford to spend $20,000-$100,000 a month to keep up with the government's private attorneys and their unlimited resources) from pursuing their constitutional right to just compensation."). Social-security claimants would be at risk of losing their benefits. *See, e.g.*, Mosich Decl. ¶ 14 ("[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 ("[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 (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 ("[A] twenty percent cap on contingency fees would seriously discourage excellent attorneys from starting a new consumer protection practice or to represent a client in a small-dollar case, even if the case is meritorious."); Keyser-Cooper Dec. ¶ 17 ("[T]his initiative would make it impossible for me to function … The [civil-rights] clients I represent would not find representation. No lawyer would want their cases.").

81. All of these people—ordinary Nevadans from all walks of life—would be worse off under Uber's proposal. Insurance companies would take notice and "utilize their knowledge of their insured's dire financial straits to pressure their insured to accept far less than their claim would be worth, knowing that the insureds would not be able to afford to retain an attorney on an hourly basis to pursue their claims." Leverty Decl. ¶ 11. As one attorney with two decades of experience litigating on behalf of

insurance companies admits, "if this petition is passed as drafted, my strategy for handling injury cases as a defense attorney would change, particularly with smaller value cases." Temple Decl. ¶ 6. Because "plaintiffs' attorneys and injured individuals would not want to pursue litigation where considerable costs would be incurred," it would be in the insurance companies' "best interests to conduct extensive discovery, retain experts, and prolong resolution to increase case costs." *Id.*

82. That means that Uber's proposal, in addition to driving out meritorious claims, would drive up the costs of litigation. And although Uber claims that the proposal would reduce the number of "frivolous lawsuits" in Nevada, experts who have studied the issue have concluded that the opposite is true. As Dr. Kritzer explains, "contingency fees reduce frivolous litigation because contingency-fee attorneys lack an incentive to devote their valuable time to such cases." Kritzer Decl. ¶ 50. "Contingency fees therefore serve a valuable screening function, eliminating most nonmeritorious cases." Kritzer Decl. ¶ 7; *see also, e.g.*, Carter Decl. ¶ 11 ("The screening procedures we have in place for complex and risky cases are extensive, particularly because the costs to litigate them are extremely high.").

83. Uber's proposal "would dramatically weaken this screening function." Kritzer Decl. ¶ 8. By "reducing the prevalence of contingency-fee arrangements, the initiative would increase the prevalence of frivolous or non-meritorious litigation." *Id.* Thus, as even leading proponents of tort reform have found in a study published by the American Enterprise Institute, fee caps like the one proposed by Uber "produce unintended negative consequences"—they "wash more low-value 'junk suits' into the legal system." *See* Alex Tabarrok & Eric Helland, *Two Cheers for Contingent Fees* 2–3 (AEI 2005).

84. If fee caps were really as beneficial as Uber claims, one would expect the proposal to apply to plaintiffs and defendants alike. But it does not. Despite it sweeping breadth, the proposal is tellingly limited in one important respect: It applies only to plaintiffs—an imbalance that goes unmentioned in the description of effect. Hinkle Decl. ¶ 13; *see also, e.g.*, Carter Decl. ¶¶ 6, 19 ("The

contingency fee arrangement provides our clients with the opportunity to level the playing field"; "[c]aps on personal injury fees," by contrast, "will create an incredibly uneven playing field."). "The description of effect not only fails to acknowledge this one-sidedness, it furthers the deception by misstating that, 'if enacted, this initiative will limit the fees an attorney can charge and receive as a contingency fee in a civil case in Nevada.'" Hinkle Decl. ¶ 13. But that isn't true. "The language of the petition does not restrict the contingency fee a defense attorney can charge in a 'reverse' contingency fee case, as described by the ABA in Formal Opinion 93-373," where the fees are "based on payments avoided." *Id.*

85. Uber also misleadingly presents contingency fees as a way that attorneys take advantage of their clients. But as many Nevada attorneys report, their clients strongly prefer contingency fees "for a number of reasons." Valiente Decl. ¶ 8. And as courts have recognized, 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). Indeed, "contingency fee agreements transfer a significant portion of the risk of loss to the attorneys taking a case," since they are the ones who will cover the costs of litigation if the case is unsuccessful. *Portsmouth 2175 Elmhurst, LLC v. City of Portsmouth*, 837 S.E.2d 504, 516 (Va. 2020).

Uber's proposal misleads Nevadans about its scope.

86. The accounts of Nevada attorneys and the ordinary people they serve illustrate just how much Nevadans will be misled and deceived about the true scope of the initiative. Uber wants Nevadans to think that the initiative targets a "small number" of "billboard attorneys," presumably attorneys who work on car accident or personal injury cases. Press Release, App. Ex. 2 (Press Release). That is entirely misleading, with drastic results.

87. The initiative does not define the extremely broad term "a civil case." App. Ex. 1 (Initiative Petition). This means it would cover a staggering range of cases that are often brought on contingency, including:

a. Patent and other intellectual property cases. Benns Decl. ¶¶ 2, 5; Kritzer Decl. ¶ 32.

b. Law enforcement officers and first responders injured in the line of duty. Waddle Decl. ¶¶ 4, 10; Mills Decl. ¶¶ 3–4, 6, 11.

c. General commercial business litigation. Hinkle Decl. ¶¶ 4, 9; Simons Decl. ¶ 8.

d. Suits for fraud on the state or federal government. Kritzer Decl. ¶ 32.

e. Eminent domain and takings cases. James Leavitt Decl. ¶ 8; Waters Decl. ¶ 8.

f. Sexual abuse, assault, and harassment. Hyman Decl. ¶ 11; Watkins Decl. ¶¶ 8, 13; Jacob Leavitt Decl. ¶¶ 3, 12; Mausert Decl. ¶ 6; Morris Decl. ¶¶ 11, 15, 20.

g. Antitrust litigation brought by Nevada small businesses against corporate monopolies and other unfair competition cases. Kritzer Decl. ¶ 32; Hinkle Decl. ¶ 9.

h. Securities litigation and shareholder suits, including on behalf of pension funds. Hinkle Decl. ¶ 9; Kritzer Decl. ¶ 32.

i. Contract disputes. Temple Decl. ¶ 6; Watkins Decl. ¶ 13.

j. Elder abuse and nursing home neglect. Carter Decl. ¶¶ 3, 15; Granda Decl. ¶ 11; Hinkle Decl. ¶ 9.

k. Workers' compensation cases. Kampschror Decl. ¶¶ 6, 8; Gallagher Decl. ¶¶ 2, 7.

l. Probate cases. Kritzer Decl. ¶ 32.

m. Social security cases. Mosich Decl. ¶ 14; Carter Decl. ¶¶ 3, 16.

n. Racial discrimination and other civil rights cases. Keyser-Cooper Dec. ¶ 17; Kritzer Decl. ¶ 32; Mausert Decl. ¶¶ 2, 7.

o. Retirement fund ERISA cases. Kritzer Decl. ¶ 32.

p. Consumer protection and deceptive trade practices cases (including predatory lending and targeting kids with addictive products). Hinkle Decl. ¶ 9; Kind Decl. ¶ 18

q. Air disasters, mass shootings, and terrorism (such as the tragic October 1, 2017, Las Vegas shooting). Carter Decl. ¶ 3; Hinkle Decl. ¶ 9.

r. Mergers and acquisitions litigation.

s. Insurance company bad faith in denying people coverage and handling claims. Hinkle Decl. ¶ 9; Leverty ¶ 5; Sharp Decl. ¶ 14.

t. Unfair debt collection and fraud. Hinkle Decl. ¶ 9.

u. Water and soil contamination. Hinkle Decl. ¶ 9.

v. Pesticide and toxin exposure in agricultural communities. Hinkle Decl. ¶ 9.

w. Bankruptcy and creditors' rights. Hinkle Decl. ¶ 9; Kritzer Decl. ¶ 32.

88. These different kinds of cases all implicate different interests that will be harmed by the initiative. Take the strong public interest in promoting innovation by allowing the inventor in her garage to defend her intellectual property against a massive company. Kritzer Decl. ¶ 32 n.16. There's also the taxpayers' interest in policing fraud against state healthcare systems. Then there's property owners' interests in just compensation when their property is taken by the government. Small business owners need to be able to get representation to make sure that bigger companies turn square corners. There's the interest of members of pension and retirement funds in protecting the savings they built up over a lifetime against unscrupulous financial institutions. And there's the public interest in safety that comes from making sure Nevada law enforcement and first responders get the care they need when they are injured protecting the rest of us.

89. But ordinary people aren't born knowing the scope and variety of civil litigation, and they will be misled about the exceptional breadth and effects of the initiative.

90. Polling bears out that the description of effect—just on its own—will mislead ordinary Nevadans about the initiative's scope. A recent poll was conducted by a nationally recognized pollster of a representative sample of Nevadans. Miller Decl. ¶¶ 1–9. The poll provided respondents with "the

Description of Effect for this initiative petition exactly as submitted by 'Nevadans for Fair Recovery,' then asked respondents both open-ended and multiple-choice questions about what they believed would be the initiative's effect, if passed." Miller Decl. ¶ 8.

91. This polling found that Uber's description of effect, on its own, misled and deceived Nevadans about the initiative's true reach.

92. Fully 45.9% of Nevadans "did not understand that the initiative would apply to sexual assault lawsuits." Miller Decl. ¶ 10(e). The fact that nearly *half* of Nevadans didn't realize this is particularly troubling because these are precisely the kinds of cases that Uber is most worried about and is trying to suppress. And as noted above, Nevada lawyers who represent sexual assault survivors report that the initiative would make it virtually impossible to sue large companies like Uber.

93. Similarly, "38.2% of Nevadans surveyed did not understand that the initiative would apply to elder abuse lawsuits." Miller Decl. ¶ 10(c).

94. And nearly one third of Nevadans "did not understand that the initiative would apply to wrongful death lawsuits." Miller Decl. ¶ 10(b).

95. In contrast, "82.1% of Nevadans surveyed understood that the initiative would apply to car accident lawsuits." Miller Decl. ¶ 10(a).

96. These results are no accident. As one of the country's leading experts on public perception of the justice system—Professor Michael McCann—explains: These polling results 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.

97. For decades, "large corporate players and instrumental allies spent great amounts of money to convince Americans that an epidemic of frivolous litigation arose in the 1970s, when, in fact,

no such epidemic existed." McCann Decl. ¶ 24. Indeed, "there was no dramatic increase in tort or other civil litigation during the time period in question, damage awards and lawyers' fees did not increase significantly, and most of the anecdotes offered as evidence by the proponents of this misleading campaign were as baseless as the overall narrative." McCann Decl. ¶ 27.

98. Unfortunately, "these efforts were too often successful at shaping public understanding." McCann Decl. ¶ 29. "Americans who were harmed by the wrongdoing of large corporations became plaintiffs just trying to make a buck. The lawyers who helped those plaintiffs recover for their injuries became ambulance chasers. And a necessary tool of corporate accountability became a crisis in our legal system." *Id.*

99. This helps explain why "[t]he 'Nevadans for Fair Recovery' proposal is so misleading on its face." McCann Decl. at 5. "What is particularly striking is that the description of effect only talks about limits on attorney fees in 'a civil case.' But against the backdrop of decades of 'tort reform' messaging, that seemingly neutral phrasing meant that nearly half of Nevadans polled did not understand the true scope of this initiative." McCann Decl. ¶ 18.

100. This deceptiveness is compounded by Uber's front organization and media campaign, which draw on "the same misleading tropes." McCann Decl. ¶ 35. The unsupported claims about "billboard attorneys" who have "co-opted the court system" at the expense of victims and businesses "are not based in evidence and are crafted only to protect large corporations from lawsuits and deny ordinary Nevadans competent representation and by extension their day in court." *Id.*

101. In sum, as the polling shows, Uber's initiative will "fundamentally mislead voters" about its true purpose and effects. McCann Decl. ¶ 36.

Uber's proposal would shift costs from big corporations to Nevada taxpayers.

102. That is far from the only way that Uber's initiative misleads and deceives Nevadans about its true consequences. Uber styled its petition so that the initiative will appear to save the State of

Nevada money. And polling shows that many ordinary Nevadans will come away with this impression. But as with Uber's other purported justifications, the actual effect will be exactly the opposite. By depriving ordinary Nevadans of compensation for the harms they've suffered, the costs for those injuries would shift from the parties responsible to the taxpayers. The initiative would therefore have dramatic and lasting effects on core state programs. And as experts on the state's healthcare system and budgeting explain, "[t]he most significant impact to the State's budget would be the loss of millions of dollars of funds for reimbursing Nevada Medicaid." Sasser-Norman Decl. ¶ 7.

Nevada Medicaid depends on recoveries in civil suits.

103. Nevada Medicaid relies on millions of dollars in reimbursements that come when big companies like Uber compensate Nevadans for the harm that they caused.

104. Nevada Medicaid provides a wide range of health services to low-income Nevadans, ranging from inpatient hospital stays to rural health clinics, from home health care to pediatric care, and from prenatal care to nursing facilities. Sasser-Norman Decl. ¶ 16. Medicaid is a lifeline "for medical and health-related services for America's poorest people." Sasser-Norman Decl. ¶ 14.

105. More Nevadans depend on Nevada Medicaid than ever before, as a result of the Affordable Care Act expansion and the Covid-19 pandemic. As of February 2024, there are 882,833 Nevadans enrolled in Medicaid—nearly one-third of the state's population. Sasser-Norman Decl. ¶ 17.[4] That is an increase of 239,152 people in the last four years. *Id.*

106. To help pay for these services, Medicaid is "designed to minimize burdens on taxpayers by recovering Medicaid expenditures from tortfeasors that cause the injuries requiring an individual to rely on Medicaid." Sasser-Norman Decl. ¶ 13.

[4] U.S. Census Bureau, *QuickFacts: Nevada*, https://perma.cc/M39H-ER5W (estimating population at 3,194,176 in 2023).

107. The way this works is straightforward: If Medicaid covered the health bills for a Nevadan who was injured, and that person then recovers money from the party responsible for the injury, Medicaid is reimbursed out of that recovery. Sasser-Norman Decl. ¶¶ 18–28; *see also* Kritzer Decl. ¶¶58–59.

108. This ensures "that the State's taxpayers do not become deep pockets (especially in cases where third parties have been found liable for a Medicaid recipient's injuries) and that taxpayer funds are not used to subsidize culpable tortfeasors." Sasser-Norman Decl. ¶ 28. In other words, as the Nevada Supreme Court explained, this ensures "fairness to the taxpayers." *Turnbow v. Dep't. of Hum. Res.*, 109 Nev. 493, 496 (2003).

109. Over a dozen state attorneys general recently echoed this point: "collect[ing] reimbursements from[] liable third parties" is "a critical component of Medicaid." Brief of Amici Curiae States of Utah, Ohio, and 12 Other States in Support of Respondent, *Gallardo v. Marstiller*, No. 20-163, 2021 WL 5604965, at *18 (S. Ct. 2021). These reimbursements "save millions of dollars each year" and "fairly place financial responsibility where it should be—on any tortfeasor responsible for the Medicaid recipient's injury." *Id.* at *19.

The initiative would deprive Nevada Medicaid of millions of dollars.

110. This initiative would put those millions of dollars at risk and let tortfeasors off the hook.

111. That's because "[m]aking it harder for Nevadans to find a lawyer does not make their injuries go away—it just shifts the costs of those harms from the people responsible to the taxpayer." Sasser-Norman Decl. ¶ 4. The initiative would make it much harder for ordinary Nevadans who have been injured to seek compensation, as set out above. And because "[s]erious injuries do not discriminate," this will land on the "small children, the elderly, single mothers, indigent citizens, [and] undocumented people" that Nevada attorneys represent. Mainor Decl. ¶ 4.

112. When these low-income Nevadans cannot "secure competent counsel," they will be "far less likely to prevail on their claims or reach a settlement that meaningfully compensates them for the injuries they suffered." Sasser-Norman Decl. ¶ 33; *see also* Kritzer Decl. ¶ 34 n.32 (describing the significantly lower success rate for pro se cases).

113. The effect on this vulnerable population will place an especially significant burden on Medicaid; "[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; *see also* Kritzer Decl. ¶ 9.

114. There are three primary ways that the initiative would cost Nevada Medicaid millions of dollars and place serious strain on the program.

115. *First*, the initiative would jeopardize millions of dollars in direct reimbursements that Medicaid receives each year. "The Division of Health Care Financing and Policy, which manages Nevada Medicaid, estimated at least $3.8 million in subrogation recoveries for FY 2023 for its fee-for-service claims alone." Sasser-Norman Decl. ¶ 34. These reimbursements would be slashed if working-class Nevadans "face serious challenges" retaining "attorneys who work with cases involving sexual assault victims, personal injury, wrongful death, elder abuse, and workers compensation." Sasser-Norman Decl. ¶ 32. But massively reducing direct reimbursements for Medicaid fee-for-service is far from the only way that the initiative will harm the program.

116. *Second*, the initiative would jeopardize reimbursements to the managed-care organizations that Nevada Medicaid relies on to implement the program. These include Anthem Blue Cross and Blue Shield, Health Plan of Nevada, Molina Healthcare of Nevada, and SilverSummit Healthplan. Sasser-Norman Decl. ¶ 34. These "managed-care organizations have their own subrogation-recovery systems that result in a very substantial cost avoidance for Nevada Medicaid each year." *Id.* And this subrogation mechanism follows the same basic principle; if people who receive care from one of these managed care

organizations receive compensation from the party responsible, they will reimburse the cost of their medical bills. But "[i]f the proposed initiative were passed and managed-care organizations were therefore unable to subrogate their payments to tort recoveries, those payments would be reimbursed by Nevada Medicaid instead." *Id.* Given this, "the $3.8 million figure dramatically understates—perhaps by orders of magnitude—the total impact on the state budget." *Id.* In fact, experts estimate that when accounting for the fact that nearly 80% of Nevada Medicaid recipients are enrolled in managed-care organizations, the number likely "would be around $19 million." Sasser-Norman Decl. ¶ 35. And that still doesn't come close to measuring the full amount of money the initiative would put at risk.

117. *Third*, hospitals will end up billing Medicaid when they can no longer recover reimbursements through lawsuits by victims. When hospitals provide care to Nevadans who are eligible for Medicaid, they have two options: (1) to bill Medicaid, or (2) seek reimbursement from any compensation the victim receives through a lawsuit. Watkins Decl. ¶ 20. Hospitals' practice is to seek reimbursement from recovery in a lawsuit *instead* of seeking reimbursement from Nevada Medicaid. Watkins Decl. ¶¶ 15–21. That is because hospitals recover significantly more in reimbursement from litigation than from Medicaid. *Id.* But as a result, "[i]f this petition is implemented, our hospitals' revenues will necessarily decrease, as there will be fewer tort claims to lien." Watkins Decl. ¶ 22. These significant costs will, once again, be passed along to Nevada Medicaid.

118. Nevada attorneys attest to just how much money their cases save the state and the taxpayer. *See, e.g.*, Moss Decl. ¶ 10 ("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."); Jones Decl. ¶ 12 ("My firm has reimbursed Medicare, Medicaid, UMC, private insurers, and hospitals in the millions of dollars, among other state and private funds."); Gallagher Decl. ¶ 10 ("[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."); Carter Decl. ¶ 22 ("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."); Watkins Decl. ¶ 14 ("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, and similarly has paid millions to UMC and private hospitals on liens."); Mills Decl. ¶ 17 (firm reimbursed "no less than $1.1 million dollars" in recent years for "Nevada Medicaid, University of Nevada Medical Center (a publicly funded hospital), and third-party administrators for state, county and municipal agencies"); Mainor Decl. ¶ 9 (reimbursements lost from his firm alone "would be in the hundreds of thousands of dollars a year specifically lost to these programs"); Granda Decl. ¶ 14 (in recent years "our clients have paid back approximately $500,000 to Nevada Medicaid and $200,000 to UMC").

119. The initiative would put these needed funds at risk. In total, experts estimate that "the initiative would cost the program millions of dollars in reimbursements." Sasser-Norman Decl. ¶ 38. 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.*

120. Nor is Nevada Medicaid the only state health program that would suffer. The Children's Health Insurance Program (CHIP) "provides coverage to certain Nevada children who are not eligible for traditional Medicaid." Sasser-Norman Decl. ¶ 13. As of February 2024, over 36,000 Nevadans are enrolled in CHIP.[5] Because CHIP relies on a similar subrogation mechanism to reimburse the program,

[5] Office of Analytics, Department of Health & Human Services, *Monitoring Medicaid Enrollments, Disenrollments, and Renewals in Nevada*, https://perma.cc/73W7-M4Q5.

"the analysis of how [Uber's initiative] will impact the Nevada Medicaid budget applies to CHIP in the exact same manner." *Id.* Uber doesn't mention that either.

The initiative would overwhelm already strained legal aid organizations.

121. Because legal aid organizations in Nevada cannot, on their own, hope to handle the legal needs of working-class Nevadans, they rely on "an ecosystem of support" in the form of private attorneys. Sasser-Norman Decl. ¶ 9. 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.* As a result, "the gap in access to legal representation created by this initiative would have a direct impact on our Legal Services providers." *Id.*

122. The Nevada Supreme Court Access to Justice Commission described the scope of the problem:

> The disparity between the number of low-income people needing legal help and the capacity of legal aid to provide it amounted to more than 112,000 unmet legal needs in 2017…This means that three 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, Ph.D. & Kelly Thayer, M.A., *Nevada Legal Needs and Economic Impact Study: Final Report* (October 31, 2018).[6]

123. 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. "The result would be an increased burden on our already strapped legal-services providers." *Id.*

[6] https://perma.cc/58DK-JDHJ.

The initiative would harm the Victims of Crime Program and those who rely on it.

124. Other important state programs also 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." Sasser-Norman Decl. ¶ 40. The covered crimes include sexual assault, domestic violence, child abuse, elder abuse, and homicide. Sasser-Norman Decl. ¶ 41. The fund helps victims of these serious crimes to cover costs associated with the crime, such as hospital bills, mental health counseling, and wage loss, among many others. Sasser-Norman Decl. ¶ 44. Like with Medicaid, if the victim recovers compensation from the perpetrator, Nevada can subrogate that amount. NRS 217.240. And "[w]hen money is recovered by the Victims of Crime Program, that money is allocable to other victims." Sasser-Norman Decl. ¶ 45(c).

125. Here too, the initiative will have damaging results for the state budget and vulnerable Nevadans. Because Uber's initiative "would dramatically limit low-income Nevadans' ability to retain counsel and recover for their injuries, this would also reduce the amount of money that is reimbursed into the Victims of Crime Program." Sasser-Norman Decl. ¶ 47. 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." Sasser-Norman Decl. ¶ 45(c).

The initiative doesn't inform Nevadans about these profound and prolonged effects on the state budget.

126. The total harm the initiative would cause is massive. If it were to become law, the initiative "would impose a significant fiscal burden—in the millions of dollars, if not tens of millions of dollars—on the State of Nevada." Sasser-Norman Decl. ¶ 48; Kritzer Decl. ¶ 63 ("state and local government[s]" will lose "significant portion of the amounts returned to the state and local treasuries through collecting on liens related to employee health insurance, workers' compensation, the crime

victims' fund, and Medicaid"). This will "have a profound and lasting impact on the State's Medicaid budget, as well as an impact on the Victims of Crime Program." Sasser-Norman Decl. ¶ 45.

127. But reimbursement-by-subrogation mechanisms aren't common knowledge. So by failing to include any mention of these fiscal burdens, the initiative will deceive and mislead regular people—who have no way of knowing that it would deprive a healthcare program on which a third of the state's population rely of millions of dollars that the program can ill afford to lose. Nor will ordinary Nevadans realize that the initiative will overwhelm the already stretched resources of Nevada legal aid providers or cut off money to a state program that helps victims of violent crimes.

128. The polling bears this out. Nearly *half* of Nevadans were under the misimpression that the initiative "would save the State of Nevada money.'" Miller Decl. ¶ 10(f).

129. Uber's deceptive messaging compounds this, falsely claiming that the initiative will "reduce costs for Nevadans." App. Ex. 2 (Press Release). In fact, the initiative will reduce costs for Uber and companies like it, while shifting the cost for the harms that they've caused onto Nevada taxpayers.

Uber's proposal also attempts to sneak through a dramatic change to how recovery is calculated that would suppress claims even further.

130. To make things worse, Uber's initiative tries to sneak through another dramatic shift that would suppress claims even further.

131. 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." App. Ex. 1 (Initiative Petition). This makes it seem like the initiative is merely lowering the percentage. But that's misleading.

132. 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. There is no explanation for this other than trying to ensure that contingency fees are only calculated after the plaintiff's medical costs are fully deducted from the recovery. *See, e.g.*, *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 457 (2022) (citing the "well-settled canon[] of statutory interpretation" known as the "meaningful-variation canon").

133. In many cases, that would slash attorneys' fees as much or more than the reduced percentage. In the vast majority of injury cases, recovery is anchored to the amount of the medical bills, which can make up 40-50% of the total recovery. Watkins Decl. ¶ 27. Accordingly, if such bills are subtracted from the amount of recovery before a contingency fee is calculated, an attorney wouldn't get 20% of anything close to the actual amount recovered under current law, instead getting 20% of a vastly 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; *see also* Moss Decl. ¶ 8 (amount would be "less than 10% of the actual recovery"); Cameron Decl. ¶ 7; Watkins Decl. ¶ 27. This would mean that "a wide variety of Nevadans would never have access to the Courts because it would be financially unsustainable for any lawyer to assist with these cases." Moss Decl. ¶ 8. Once again, 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.

134. But the description of effect does not mention this sea change. No wonder, then, that polling found that virtually no Nevadans realized that attorneys would receive below 20% of recovery—much less something significantly below 20%. Miller Decl. at 4. Instead, polling found that a majority of Nevadans are confused about how contingency fees would be calculated. *Id.*

If Uber succeeds, Nevada will be a national outlier.

135. No other state has such a draconian cap—not even close. Hinkle Decl. ¶ 5. Forty-eight states don't impose any set cap at all on contingency fees across all civil cases, which is unsurprising given the breadth of the harm and disruption this would cause. The overwhelming majority of states, 45 in total, currently require only that contingency fees must be reasonable—the current rule in Nevada—or that they must not be excessive or unconscionable. *Id.* Three more states employ a sliding scale in general tort claims, but none go as low as the initiative's proposed cap. *Id.* Finally, only two states impose a general cap in civil cases, Oklahoma and Michigan, but these caps are 50% and 33.33% respectively (and Michigan's low cap applies only in certain kinds of cases). *Id.* If the initiative passes, Nevada would be in a class of one.

136. This means that ordinary Nevadans would confront the highest barriers in the nation to accessing compensation for the harms they've suffered. Nevada police officers injured in the line of duty would be less likely to recover compensation than police officers in the rest of the country. If a Nevadan is sexually assaulted by a rideshare driver, she would have a harder time seeking justice than anywhere else in the country. Nevada businesses would be left out in the cold when it comes to defending their patents against multinational corporations. The initiative's burdens on commercial litigation would make the state a worse place to do business. And Nevada Medicaid would lose out on millions of dollars that other state Medicaid programs don't, to the detriment of the hundreds of thousands of Nevadans who rely on the program and the Nevada taxpayer generally.

137. If Uber were up front about what it's selling, Nevadans wouldn't buy it. That's why the company needs to deceive voters about the initiative's scope and mislead them about its effects. Nevada law does not permit this kind of bait-and-switch.

FIRST CAUSE OF ACTION
(*Violation of Single-Subject Rule*)

138. Under Nevada law, an initiative petition may "[e]mbrace but one subject and matters necessarily connected therewith and pertaining thereto." NRS 295.009(1)(a). The "single-subject requirement" helps protect the will of the voters by "promoting informed decisions," "preventing the enactment of unpopular provisions by attaching them to more attractive proposals." *Las Vegas Taxpayer Accountability Comm. v. City Council of City of Las Vegas*, 125 Nev. 165, 176 (2009). Under this standard, the "parts of the proposed initiative" must "provide[] sufficient notice of the general subject of, and *of the interests likely to be affected by*, the proposed initiative." NRS 295.009(2) (emphasis added). This is violated if the initiative's purpose "fails to provide sufficient notice of the wide array of subjects addressed … or the interests likely to be affected by it." *Nevadans for Prop. Rts.*, 122 Nev. at 909.

139. The supposed purpose of the initiative is to improve the recoveries of victims of injuries by addressing a purported crisis of "billboard" attorneys charging excessive contingency fees. But ordinary Nevadans have no notice that the initiative also applies to a vast range of subjects that implicate different interests and concerns, including sexual assault, elder abuse, patent law, antitrust, eminent domain, contract disputes, mergers and acquisitions litigation, fraud suits on behalf of the state or federal government, to name just a few.

140. The initiative also purports to change only the percentage of contingency fees that a client and attorney could agree to. However, the initiative also slips through a dramatic change in the definition of "recovered," which would have the effect of lowering the cap to far below 20% of recovery under current law in many cases—especially those involving working-class Nevadans.

SECOND CAUSE OF ACTION
(*Violation of Description-of-Effect Requirement*)

141. Nevada law also requires "a description of the effect of the initiative" that "must appear on each signature page of the petition." NRS 295.009(1)(b). This must summarize "what the initiative is

designed to achieve and how it intends to reach those goals." *Educ. Freedom PAC v. Reid*, 138 Nev. Adv. Op. 47, 512 P.3d 296, 304 (Nev. 2022). "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.*, 2016 WL 2842925, at *2 (unpublished disposition). Uber's description of effect is deceptive, misleading, and inadequate.

142. First, Uber's description of the initiative is deceptive, misleading, and inadequate because it fails to alert Nevadans to its sweeping scope. As polling shows, the description misleads Nevadans into thinking that this is a narrow proposal that targets "'ambulance chasers' and 'billboard attorneys,' not advocates for survivors of sexual assault or the families of victims of elder abuse." McCann Decl. ¶ 18. Nor will regular Nevadans understand that this proposal extends to areas like patent law, eminent domain, antitrust, fraud against the government, and so many others, each with their own sets of interests and concerns.

143. Second, the description of effect is deceptive, misleading, and inadequate when it comes to informing voters about the initiative's purpose and significant consequences. The description does not mention any purpose at all and has no title. But proponents present the purpose of the proposal as helping victims obtain *more* compensation. In fact, the actual result would be the exact opposite. Because contingency fees are the only way most working-class Nevadans can afford a lawyer, the initiative would dramatically *reduce* the amount the victims can recover from big companies like Uber.

144. Third, the description of effect is deceptive, misleading, and inadequate because it fails to inform potential signatories of the lasting and profound fiscal impact that the proposal would have on Nevada Medicaid and other government programs. By making it far more difficult for regular Nevadans to receive just compensation from big companies, the initiative would deprive Nevada Medicaid of millions of dollars in reimbursement. The initiative would also lead to far more hospitals billing Medicaid when currently they are paid out of recovery from the party actually responsible for the harm.

And the initiative would also overwhelm legal aid providers who are already stretched far too thin and would deprive the state Victims of Crime fund of crucial reimbursements. Uber's description mentions none of these effects, and instead misleads Nevadans into thinking that the proposal would save the state money.

145. Fourth, the description of effect is deceptive, misleading, and inadequate because it also does not alert Nevadans to just how one-sided the initiative is. A regular reader would not realize that the initiative would leave defendants entirely free to pay as much money in contingency fees as they would like to secure the best legal representation possible, while tying the hands of ordinary Nevadans to do the same.

146. Finally, the description of effect is deceptive, misleading, and inadequate because it fails to mention the dramatic change in how recovery is calculated. Even though in many cases the proposal would actually cap contingency fees at far less than 20% of recovery under current law, the description of effect doesn't mention anything about this. For many lawyers, this would mean that they would recover little or no fee in many cases representing ordinary Nevadans. And by comparing the proposed 20% cap to the 35% medical malpractice cap, the description misleads readers into thinking this is an apples-to-apples comparison.

THIRD CAUSE OF ACTION
(*Violation of Full Text Rule*)

147. Under the Nevada Constitution, "no law shall be revised or amended by reference to its title only; but, in such case, the act as revised or section as amended, shall be re-enacted and published at length." Nev. Const. art. 4, § 17. In the context of petitions, "[e]ach referendum and initiative petition shall include the full text of the measure proposed." Nev. Const. art. 19, § 3(1). Nevada statutes also require proponents of petitions to ensure that "each signer had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded." NRS 295.0575(6).

148. Uber's initiative would revise or amend NRS 7.095, which currently sets the contingency fee limits for medical malpractice cases. The initiative would amend both the percentage of the amount recovered that can be charged *and* the formula for calculating recovery. NRS 7.095(1), (3). But the petition does not include the full text of NRS 7.095 so voters can understand the nature of the changes. Similarly, Uber's initiative would revise or amend NRS 228.1116, which governs contingency fees for attorneys retained by the state. But the petition does not include the full text of NRS 228.1116.

PRAYER FOR RELIEF

The plaintiffs ask for the following relief:

1. A declaration that the petition does not comply with NRS 295.009(1)(b) because it does not embrace but one subject and matters necessarily connected therewith and pertaining thereto in a way that provides sufficient notice of the general subject of, and of the interests likely to be affected by, the proposed initiative;
2. A declaration that the petition's description of effect does not comply with NRS 295.009(1)(b) because it is deceptive, misleading, and fails to explain the ramifications of the proposed amendment sufficiently to allow voters to make an informed decision;
3. A declaration that the petition violates Nev. Const. art. 4, § 17, and Art. 19, § 3(1), as well as NRS 295.0575(6), because it fails to include the full text of provisions that the initiative is revising or amending so that the voters can understand the nature of the changes;
4. An order enjoining and prohibiting the Nevada Secretary of State from allowing the circulation of the petition for signatures, or otherwise advancing the petition;
5. An order enjoining and prohibiting the defendants and their officers and agents from collecting signatures;
6. An award of the plaintiffs' reasonable attorneys' fees and costs; and
7. Such other and further relief as the Court deems appropriate.

AFFIRMATION

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

Respectfully submitted,

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** pro hac vice applications forthcoming*

April 8, 2024