

IN THE SUPREME COURT OF NEVADA

-----X
CHRISTOPHER THOMAS and)
CHRISTOPHER CRAIG,)
Individually and on behalf of others)
similarly situated,)

) Petitioners,

vs.)

NEVADA YELLOW CAB)
CORPORATION, NEVADA)
CHECKER CAB CORPORATION,)
NEVADA STAR CAB)
CORPORATION,)

) Respondents,
_____)

Electronically Filed
Nov 27 2012 08:20 a.m.
Tracie K. Lindeman
Clerk of Supreme Court
Sup. Ct. No. 61681
Dist. Ct No.:A-12-661726-C
Dept. No. XXVIII

APPELLANTS' OPENING BRIEF

Leon Greenberg, NSB 8094
A Professional Corporation
2965 S. Jones Boulevard - Suite E-4
Las Vegas, Nevada 89146
Telephone (702) 383-6085
Fax: 702-385-1827

Attorney for Appellants

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

JURISDICTIONAL STATEMENT. 1

STATEMENT OF ISSUES PRESENTED. 1

STATEMENT OF THE CASE. 1

STATEMENT OF FACTS. 2

SUMMARY OF ARGUMENT. 2

APPLICABLE STANDARD OF REVIEW. 3

ARGUMENT. 3

I. NEVADA’S CONSTITUTION SETS FORTH AN
INDEPENDENT LEGAL REQUIREMENT FOR THE
PAYMENT OF MINIMUM WAGES TO WHICH
NRS 608.250(2)(E) IS INAPPLICABLE. 3

 A. Appellants’ Claim for Minimum Wages was Brought
 Directly Under Nevada’s Constitution, Not NRS 608.250,
 and Such Statute Was Not Implicated Under the Facts
 Pleaded in the Complaint. 3

 B. The Nevada Constitution Creates Minimum Wage
 Requirements That are Independent of, and Unconcerned
 With, the Requirements Of NRS 608.250(1) and its
 Exemptions. 6

 C. The Nevada Constitution Has Implicitly Repealed the Taxi
 Driver Minimum Wage Exemption in NRS 608.250(2)(e) 10

 1. An Implicit Repeal Has Occurred Because the
 Nevada Constitution has Revised the “Whole
 Subject Matter” of Minimum Wages in Nevada. 10

Conclusion. 12

Certificate of Compliance With N.R.A.P Rule 28.2. 13

TABLE OF AUTHORITIES

Page

Federal Rules

Nev. R. Civ. P. 12(b)(1). 1

Federal Cases

Lucas v. Bell Transportation,
2009 U.S. Dist. LEXIS 72549,
(D. Nev. June 23, 2009).. 3-5

Supreme Court Cases

Eureka County Bank Habeas Corpus Cases,
126 P. 655 (Nev. Sup. Ct. 1912).. 10

Kaysser v. McNaughton,
57 P.2d 927 (Sup. Ct. Cal. 1936). 9

McKay v. Board of Supervisors,
730 P.2d 438 (1986). 10

Nevada Mining Association v. Erdoes,
26 P.3d 753 (2001)(Sup. Ct. Nev. 2001).. 8

Nevadans for Nevada v. Beers,
142 P.3d 339 (Sup. Ct. Nev. 2006).. 8

Sanchez v. Wal-Mart Stores, Inc.,
221 P.3d 1276, 1280 (2009). 3

State ex rel. State Bd. of Equalization v. Baks,
148 P.3d 717 (Nev. Sup. Ct. 2006).. 8

Western Realty Co. v. Reno,
172 P.2d 158, (Nev. Sup. Ct. 1946). 3

Western Realty Co. v. Reno,
172 P.2d 158, (Nev. Sup. Ct. 1946). 3

State Statutes

N.R.S. § 608.250(1).. 2, 6-10

1	N.R.S. § 608.250(2)(e).	2, 4-7, 9-11
2	Nevada Constitution, Article 15, Section 16.	6, 9
3		
4	State Rules	
5	Nev. R. Civ. P. 12(b)(5).	3
6		
7	<u>State Cases</u>	
8	<i>Board of Retirement v. Superior Court,</i>	
9	101 Cal. App. 4th 1062 (Cal. Ct. App. 2002).	3
10	<i>State ex rel. Nevada Orphan Asylum v. Hallock,</i>	
11	16 Nev. 373 (1882).	2, 10
12	Other Authorities	
13	Nevada Attorney General Opinion 2005-04.	7, 10
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURISDICTIONAL STATEMENT

This Court has jurisdiction over this appeal because it is an appeal of a final judgment.

The Order of Dismissal constituting a final judgment was entered by the District Court in this case on August 30, 2012 and Notice of Entry of the same served by mail and filed with the district court on September 4, 2012. The Notice of Appeal was served and filed on September 6, 2012.

STATEMENT OF ISSUES PRESENTED

This appeal presents the following issues:

(1) Whether the Nevada Constitution, Article 15, Section 16, requires the payment of an hourly minimum wage to employees working as taxi drivers in Nevada even though such employees are exempted from Nevada’s statutory minimum wage requirement, NRS 608.250(1), by N.R.S. 608.250(2)(e).

STATEMENT OF THE CASE

This case was commenced on May 11, 2012 in the Eighth Judicial District Court. The appellants, Christopher Thomas and Christopher Craig (hereinafter “appellants” or “Taxi Drivers”) allege the appellees, Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation, and Nevada Star Cab Corporation (hereinafter “appellees” or “Yellow Checker Star”) failed to compensate them with the minimum hourly wage required by the Nevada Constitution. Appellants’ Class Action Complaint alleged Yellow Checker Star failed to pay them and a class of similarly situated Taxi Drivers the minimum hourly compensation required by Nevada’s Constitution.

Yellow Checker Star moved the district court to dismiss this case pursuant to Nev. R. Civ. P. 12(b)(1) and (5), for lack of subject matter jurisdiction and failure to state a claim upon which relief could be granted. That motion was argued before the district court on July 30, 2012 and, by an order signed on August 30,2012, and entered by the clerk of the district court on

1 August 31, 2012, such motion was granted. AA 04-06.¹

2 **STATEMENT OF FACTS**

3 Appellants are employed by Yellow Checker Star as taxi cab drivers in
4 Clark County, Nevada. They claim Yellow Checker Star has, at certain times,
5 failed to pay them the minimum hourly compensation required by Article 15,
6 Section 16 of the Nevada Constitution. AA 09-13. Yellow Check Star has not
7 disputed that it failed to pay the Taxi Drivers the minimum hourly compensation
8 specified by the Nevada Constitution.

9 **SUMMARY OF ARGUMENT**

10 Article 15, Section 16 of the Nevada Constitution (the “Nevada
11 Constitutional Minimum Wage”), independently, and without reference to any
12 Nevada statute, mandates the payment of a specified minimum amount of hourly
13 compensation to all Nevada employees except those specifically identified in
14 that same section. Such mandate requires no “implicit repeal” of NRS
15 608.250(2)(e) which, by its own express language, only exempts taxi drivers
16 from the minimum wage provisions of NRS 608.250(1). Appellants assert no
17 claim under NRS 608.250(1) and their exclusion from the minimum wage
18 requirements imposed by that statute is irrelevant. Their claim is grounded
19 directly, and solely, upon the rights independently conferred to them by
20 Nevada’s Constitution, which have not, and cannot, be abrogated by NRS
21 608.250(2)(e) or any other Nevada statute.

22 Even if an “implicit repeal” of NRS 608.250(2)(e) was required for
23 Appellants to be entitled to Nevada’s Constitutional Minimum Wage, such an
24 implicit repeal has occurred. This is because Nevada’s Constitution, by
25 conferring upon Nevada employees a broad and unqualified right to a minimum
26 wage, has effected a revision of the entire subject of minimum wages in Nevada.

27
28 ¹ Referenced page numbers of Appellant’s Appendix are referred to as
“AA.”

1 *See, State ex rel. Nevada Orphan Asylum v. Hallock*, 16 Nev. 373, 378 (1882)
2 (constitutional amendment that addresses subject displaces prior statute) and
3 *Western Realty Co. v. Reno*, 172 P.2d 158, 165 (Nev. Sup. Ct. 1946) (later
4 enactment that “revises the whole subject-matter” at issue will repeal a prior
5 statute). *See, also, Board of Retirement v. Superior Court*, 101 Cal. App. 4th
6 1062, 1068 (Cal. Ct. App. 2002) (holding a statute is implicitly repealed by a
7 constitutional amendment when the latter “constitute[s] a revision of the entire
8 subject.”).

9 **APPLICABLE STANDARD OF REVIEW**

10 This Court reviews a decision by the district court to dismiss under Nev.
11 R. Civ. P. 12(b)(5) under a “rigorous appellate review” standard. *See, Sanchez*
12 *v. Wal-Mart Stores, Inc.*, 221 P.3d 1276, 1280 (Nev. 2009). The plaintiff’s
13 factual allegations must be accepted as true and dismissal is improper if those
14 allegations sufficiently allege the elements of the claims asserted. *Id.* In
15 reviewing the district court's dismissal order, every reasonable inference is
16 drawn in the plaintiff's favor. *Id.*

17 **ARGUMENT**

18 **I. NEVADA’S CONSTITUTION SETS FORTH AN INDEPENDENT** 19 **LEGAL REQUIREMENT FOR THE PAYMENT OF MINIMUM** 20 **WAGES TO WHICH NRS 608.250(2)(E) IS INAPPLICABLE**

21 **A. Appellants’ Claim for Minimum Wages was Brought Directly** 22 **Under Nevada’s Constitution, Not NRS 608.250, and Such** 23 **Statute Was Not Implicated Under the Facts Pleaded in the** 24 **Complaint**

25 The district court conducted no independent analysis and instead adopted
26 the holding of an unreported federal district court decision, *Lucas v. Bell*
27 *Transportation*, 2009 U.S. Dist. LEXIS 72549, (D. Nev. June 23, 2009). *Lucas*
28 never discusses the express language of Nevada’s Constitutional Minimum
Wage stating that it is imposing upon each employer an obligation “to pay a
wage to each employee of not less than the hourly rates *set forth in this*

1 **section.**” (Emphasis provided). *Lucas* simply assumed, without discussion of
2 such language or any analysis of whether the Nevada Constitution imposes its
3 own freestanding minimum wage requirement, that “[t]he focus of the
4 Amendment was the actual minimum wage.” *Id.* p. 23. It then went on to
5 conduct only an “implied repeal” analysis and erroneously concludes no such
6 repeal was established because “...this Court cannot conclude that there is no
7 other reasonable construction of the Amendment than that it repealed NRS
8 608.250.” *Id.*

9 *Lucas* ignores the express and unambiguous language of both the Nevada
10 Constitution and NRS 608.250(2). The Nevada Constitution makes no
11 reference to NRS 608.250 and expressly imposes its own self contained and
12 specified minimum wage obligation. The exemptions set forth in NRS
13 608.250(2) are expressly limited to the minimum wage obligations imposed by
14 NRS 608.250(1).² *Lucas* transformed Nevada’s Constitutional Minimum Wage
15 into a mere modification of NRS 608.250(1), which in turn was subject to the
16 limitations imposed by NRS 608.250(2). In doing so *Lucas* acted in derogation
17 of a fundamental principle of law: that a constitutional provision supercedes,
18 and cannot be modified by, any legislative enactment, except when the
19 constitutional provision itself confers that power upon the legislature. No such
20 power is granted to the Nevada Legislature by the Nevada Constitutional
21 provision at issue in this case.

22 *Lucas* also engaged solely in an “implied repeal” analysis, and an
23 erroneous one at that, without considering how NRS 608.250 and the Nevada
24 Constitution are not in conflict and act in tandem within their defined spheres of
25 authority, as discussed, *infra*. *Lucas* assumes either NRS 608.250 was repealed

26
27 ² The relevant limiting language of NRS 608.250(2) states: “The
28 provisions of subsection 1 [NRS 608.250(1)] do not apply to...”

1 or if it was not repealed it controls the otherwise clear and unambiguous
2 language of the Nevada Constitution. Contrary to the conclusion of *Lucas*, a
3 failure by the Nevada Constitution to expressly or implicitly repeal NRS
4 608.250(2) is irrelevant. The Nevada Constitution requires all employers pay
5 the minimum wage specified by that “section” of the Nevada Constitution to all
6 employees as specified therein. It also grants employees a broad right to seek
7 relief for its violations. It is entirely self-executing and refers to no Nevada
8 statutes. The most “reasonable construction” of the Nevada Constitution, one
9 not even considered by *Lucas*, is that it imposes its own independent minimum
10 wage obligations pursuant to its express and unambiguous language,
11 irrespective of whether it effectuated a repeal of NRS 608.250(2) and is, in any
12 event, not subject to such statute.

13 Appellants’ complaint makes no claim for minimum wages under NRS
14 608.250 and their exemption from that statute’s minimum wage requirements is
15 wholly irrelevant. The only claim for relief made in this case is pursuant to
16 Nevada’s Constitution, which sets forth its own specified minimum wage rates.
17 That same provision of Nevada’s Constitution, at subsection B thereof, confers
18 upon an employee a right to “bring an action against his or her employer in the
19 courts of this State” for “all remedies available under the law or in equity” that
20 are “appropriate to remedy any violation” of such constitutional provision. The
21 Taxi Drivers’ claim for relief, both substantively and procedurally, is
22 completely derived from, and controlled by, the terms of Nevada’s Constitution.
23 It has no relationship whatsoever to NRS 608.250.

24 Rather than recognize the issue is not what Nevada’s *statutes* impose as a
25 minimum wage obligation, but what its *constitution* requires, the district court,
26 and *Lucas*, examined the wrong issue, and found the Nevada Constitution
27 imposes no separate, independent, minimum wage obligation. Such an
28 assumption was clearly erroneous and contrary to the language of the Nevada

1 Constitution.

2 **B. The Nevada Constitution Creates Minimum Wage**
3 **Requirements That are Independent of, and Unconcerned**
4 **With, the Requirements Of NRS 608.250(1) and its**
5 **Exemptions**

6 The district court’s decision was also erroneous because it adopted the
7 view that the *only* thing the Nevada Constitution commanded in respect to the
8 minimum wage was an increase in its amount. The district court found, relying
9 upon *Lucas*, that “[t]he focus of the Minimum Wage Amendment was the actual
10 minimum wage.” AA 05. The district court provided no support for this
11 finding, which is clearly contrary to the express language of the Nevada
12 Constitution, which does not refer anywhere to raising the amount of the
13 minimum wage *otherwise required* under Nevada law. Instead it expressly
14 imposes its own independent minimum wage requirements in its very first
15 sentence:

16 Nevada Constitution, Article 15, Section 16

17 Payment of minimum compensation to employees.

18 A. Each employer shall pay a wage to each employee of not less than the
19 hourly rates *set forth in this section*. (Emphasis provided)

20 The Nevada Constitution does not reference the pre-existing minimum
21 wage set forth in NRS 608.250(1), much less discuss how it is merely “raising”
22 such minimum wage as *Lucas* and the district court found. It refers solely to the
23 requirements *of this section* meaning the minimum wage expressly set forth in
24 Nevada’s Constitution, such minimum wage being specified at \$5.15 or \$6.15
25 an hour and subject to a number of requirements and future increases as set forth
26 in that same constitutional section.

27 The Nevada Legislature had the power to address minimum wage issues,
28 both before and after the Nevada Constitution’s amendment imposed certain
minimum wage requirements. The legislature exercised that power and enacted
certain minimum wage standards (NRS 608.250(1)) and exceptions thereto

1 (NRS 608.250(2)) prior to the Nevada Constitutional Minimum Wage's
2 creation. The Nevada Legislature's decision to do so is irrelevant to this case.
3 There is no support in the law, or otherwise, that the Nevada Legislature can
4 now, by the enactment of a mere statute, override any of the provisions of
5 Nevada's Constitution. Nor can statutes it has passed prior to the Nevada
6 Constitution's minimum wage amendment, such as NRS 608.250(2), create
7 exceptions to the minimum wage otherwise required by such constitutional
8 amendment.

9 The district court's findings would be correct if Nevada's Constitution
10 read "Each employer shall pay a wage to each employee [to whom the minimum
11 wage statutes of Nevada are applicable] of not less than the hourly rates set
12 forth in this section." The foregoing bracketed language, if it were actually
13 present in the Nevada Constitution, would have, as the district court found,
14 merely raised the minimum wage for those employees already subject to NRS
15 608.250(1). Such words, being absent, mandates an application of Nevada's
16 Constitution by its express language, which requires payment of "a wage to
17 each employee of not less than the hourly rates set forth in this section." The
18 only exceptions to the required payment set forth in "this section" of Nevada's
19 Constitution are in subparts B and C thereof. Those exceptions are for certain
20 employees subject to union negotiated collective bargaining agreements, or who
21 are under 18 years of age and are trainees or employed by a non-profit,
22 circumstances not relevant to this case.

23 Then Nevada Attorney General, later United States District Court Judge,
24 and current Nevada Governor, Brian Sandavol, also concluded the minimum
25 wages required by Nevada's Constitution are not limited by NRS 608.250(2).
26 *See*, Nevada Attorney General Opinion 2005-04. AA14-24. The analysis
27 utilized in that opinion looked to the precise language of the Nevada
28 Constitution, specifically its imposition of a minimum wage as specified in that

1 “section” of the Nevada Constitution and its failure to make any mention of
2 NRS 608.250.

3 The conclusion reached by the Attorney General in Opinion 2005-04 is
4 well supported by precedent. There is no ambiguity in the Nevada
5 Constitution’s directive that “each employer shall pay to each employee a wage
6 of not less than the hourly rates set forth in this section” of the Constitution.
7 Absent ambiguity, the Nevada Constitution’s language must be applied pursuant
8 to its plain meaning. *See, Nevadans for Nevada v. Beers*, 142 P.3d 339, 347
9 (Sup. Ct. Nev. 2006). The command that every employer “shall pay” to “each
10 employee” at least the wage specified by such section must be given mandatory
11 application by this Court to every employee except those the Nevada
12 Constitution, itself, excludes. *See, State ex rel. State Bd. of Equalization v.*
13 *Baks*, 148 P.3d 717, 724 (Nev. Sup. Ct. 2006) (“By using the mandatory term
14 ‘shall,’ the Constitution clearly and unambiguously requires that the methods
15 used for assessing taxes throughout the state must be ‘uniform.’”) *See, also*
16 *Nevada Mining Association v. Erdoes*, 26 P.3d 753, 759 (2001)(Sup. Ct. Nev.
17 2001)(Nevada Supreme Court is “not free to presume” Constitutional provision
18 means “anything other” than what it says).

19 The Nevada Constitution creates its own wholly independent minimum
20 wage requirements that exist in tandem with the requirements of NRS
21 608.250(1). There is no conflict between the two schemes. Nevada’s minimum
22 wage statute, NRS 608.250(1), requires certain minimum wage payments and
23 provides, at NRS 608.250(2), for certain exceptions to NRS 608.250(1)’s
24 requirements. Nevada’s Constitution requires a different, and potentially
25 higher,³ minimum wage payment and subjects such requirement to a different

26
27 ³ Nevada’s Constitution only assures an increased minimum wage for the
28 employees it specifies who are *not* provided access to health insurance. For
employees receiving such health insurance, the minimum wage currently

1 group of exceptions. An employee may be covered by just the Nevada
2 Constitution, as are Yellow Checker Star’s taxi cab drivers, by both NRS
3 608.250(1) and the Nevada Constitution, or neither.

4 The Nevada Constitutional Minimum Wage, at subpart B, provides that
5 “All of the [minimum wage pay] provisions of this section, or any part hereof,
6 may be waived in a bona fide collective bargaining agreement [a “CBA”]....”
7 The Nevada minimum wage statute contains no such exemption at NRS
8 608.250(2) in respect to the minimum wage requirements of NRS 608.250(1).
9 This means Yellow Checker Star’s taxi cab drivers, if they were employed
10 under a CBA waiving the Nevada Constitution’s minimum wage requirements,
11 would also be exempt from the Nevada statutory minimum wage by virtue of
12 NRS 608.250(2). Yet other Nevada workers, who may work under a CBA
13 waiving Nevada’s Constitutional Minimum Wage, are still entitled to Nevada’s
14 statutory minimum wage, as neither NRS 608.250(2) nor any other statute
15 provides for a waiver of Nevada’s statutory minimum wage by a CBA.

16 Subpart “C” of the Nevada Constitutional Minimum Wage also creates a
17 minimum wage standard that does not completely overlap with the minimum
18 wage standards created by NRS 608.250. Such subpart expressly exempts from
19 the Nevada Constitution’s minimum wage requirements certain persons under
20 18 years of age employed by non-profits and trainees. Those persons are not
21 exempted from the requirements of NRS 608.250(1) by NRS 608.250(2) and as
22 a result possess a statutory, but not Nevada Constitutional, minimum wage right.

23 The existence of dual, non-conflicting, and independent, duties imposed
24 by both a statute and a state constitution covering the same subject matter, has
25 been found proper. *See, Kaysser v. McNaughton*, 57 P.2d 927, 930 (Sup. Ct.

26 _____
27 required by Nevada’s Constitution is the same as the federal minimum wage,
28 such federal minimum wage also being the wage set by the Nevada Labor
Commissioner for the purposes of NRS 608.250(1).

1 Cal. 1936) (finding that repeal of constitutional amendment did not
2 automatically repeal statute covering same subject matter as both a statute and
3 constitution can, and do, impose independent liabilities over the same subject
4 matter).

5 **C. The Nevada Constitution Has Implicitly Repealed the Taxi**
6 **Driver Minimum Wage Exemption in NRS 608.250(2)(e)**

7 **1. An Implicit Repeal Has Occurred Because the**
8 **Nevada Constitution has Revised the “Whole**
9 **Subject Matter” of Minimum Wages in Nevada**

10 The district court, in its order dismissing plaintiff’s complaint, also found
11 that the “Minimum Wage Amendment did not repeal N.R.S. 608.250 by
12 ‘implication.’” AA 05. As explained *supra*, such an “implied repeal” finding is
13 unnecessary. A proper “implicit repeal” analysis of NRS 608.250(2) also results
14 in an implicit repeal having been effectuated by the Nevada Constitution. As
15 held by the Attorney General in Opinion 2005-04, voters are presumed to have
16 known the status of Nevada’s existing minimum wage law when they approved
17 the Nevada Constitutional Amendment and “it is ordinarily presumed that
18 ‘where a statute is amended, provisions of the former statute omitted from the
19 amended statute are repealed.’” 2005 Nev. AG LEXIS 4, *12, citing *McKay v.*
20 *Board of Supervisors*, 730 P.2d 438, 442 (1986), AA 18.⁴ Attorney General
21 Opinion 2005-04 expressly holds the Nevada Constitution has implicitly
22 repealed all of the occupational exemptions contained in NRS 608.250(2). *Id.*
23 *See, also, State ex rel. Nevada Orphan Asylum*, 16 Nev. at 378 (constitutional
24 amendment that addresses subject displaces prior statute).

25 The conclusion of the Nevada Attorney General that Nevada’s

26 _____
27 ⁴ The same rules are utilized to determine whether statutes or
28 constitutional amendments repeal previously enacted statutes. *Nevada Mining*
Association, 26 P.3d at 753.

1 Constitution has implicitly repealed the provisions of N.R.S. 608.250(2) is
2 strongly supported by precedent from both Nevada and other jurisdictions. As
3 stated in *Eureka County Bank Habeas Corpus Cases*, 126 P. 655, 676 (Nev.
4 Sup. Ct. 1912):

5 In the case of *Bartlet et al. v. King, Executor*, 12 Mass. 537, 7 Am.
6 Dec. 99, the rule applicable to this case was stated as follows: A
7 subsequent statute, revising the whole subject-matter of a former
8 one, and evidently intended as a substitute for it, although it
9 contains no express words to that effect, must, on the principles of
10 law, as well as in reason and common sense, operate to repeal the
11 former.' This court has heretofore twice quoted with approval the
12 rule as above declared in the *Bartlet* case, and it is supported by
13 abundant authority from other courts. *Thorpe v. Schooling*, 7 Nev.
14 15; *State v. Rogers*, 10 Nev. 319; *Mack v. Jastro*, 126 Cal. 130, 58
15 P. 372; *State Board of Health v. Ross*, 191 Ill. 87, 60 N.E. 811.)
16 See, also, 26 Am. & Eng. Ency. Law, 2d ed. 731, and authorities
17 cited in note 4." (*Union Trust Co. v. Trumbull*, 137 Ill. 146, 27 N.E.
18 24.)

19 In the event an "implicit repeal" of NRS 608.250(2)(e) is necessary for
20 the Taxi Drivers to proceed on their claim under the Nevada Constitution, such
21 a repeal has been effectuated. The Nevada Constitution indisputably acted to
22 revise "the whole subject matter" of minimum wages in Nevada. It did so by
23 creating minimum wage standards that were beyond the legislature's power to
24 modify. Its provisions, not being subject to limitation by the legislature after
25 their approval by the electorate, must also have operated as a matter of "reason
26 and common sense" to repeal any claimed limitations on their scope set forth in
27 Nevada's previously existing minimum wage statute.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

Wherefore, for all the foregoing reasons, the Order and Judgment
appealed from should be reversed in its entirety.

Dated: November 26, 2012

Respectfully submitted,

/s/ Leon Greenberg
Leon Greenberg, Esq. (Bar # 8094)
A Professional Corporation
2965 S. Jones Blvd., Suite E-4
Las Vegas, Nevada 89146
(702) 383-6085
Attorney for Appellant

CERTIFICATE OF MAILING

The undersigned certifies that on the November 26, 2012, she served the within:

APPELLANTS' OPENING BRIEF AND
APPENDIX

by depositing the same in the U.S. mail, first class postage, prepaid, addressed as follows:

TO:

Marc C. Gordon, Esq.
General Counsel
Yellow Checker Star Transportation Co.
Legal Dept.
5225 W. Post Road
Las Vegas, NV 89118

Sydney Saucier

Sydney Saucier