IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER THOMAS and CHRISTOPHER CRAIG, Individually and on behalf of others similarly situated, Appellants, vs. NEVADA YELLOW CAB CORPORATION, NEVADA CHECKER CAB CORPORATION, NEVADA STAR CAB CORPORATION, Respondents,	Sup. Ct. No. 61681 Dist. Ct No.:A-12-661726-C Dept. No. XXVIII

APPELLANTS' REPLY TO RESPONDENTS' OPPOSITION TO APPELLANTS' MOTION TO CORRECT OPINION OF JUNE 26, 2014 AND STAY REMITTITUR

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SUMMARY

Respondents' opposition confirms that upon remittitur respondents will claim that this Court's Opinion of June 26, 2014 only governs respondents' conduct *after* that date. Such argument is, as was respondents' petition for rehearing, utterly lacking in merit. Yet, unless addressed by a correction of the Court's Opinion, respondents will press such argument upon the district court and back upon this Court in a subsequent appeal. This Court, in the interests of judicial efficiency, should put an end to such dilatory litigation tactics by respondents by granting appellants' motion.

ARGUMENT

I. Appellants' motion is not time barred under NRAP 41(a)(1).

Appellants' motion does not seek rehearing and is not governed by NRAP 41(a)(1). Appellants do not seek to rehear any of the findings made in such Opinion. They only seek to forestall respondents from fomenting another, completely pointless, appeal to this Court.

That the NRAP provides no specified procedure for seeking a correction of an Opinion's language does not prohibit this Court from ruling on the appellants' motion. This Court has the inherent power to govern its own procedures. *See, Berkson v. LePome,* 245 P.3d 560, 565 (Nev. Sup. Ct. 2010), citing *State v. Dist Ct. [Marshall]*, 11 P.3d 1209, 1212 (Nev. Sup. Ct. 2000) and other cases. Accordingly, it has the power to correct the language of its own Opinions, and can choose to do so even after it issues a remittitur of an appeal. Respondent cites not an iota of authority suggesting otherwise.

II. No retroactive application of law issue is raised by this Court's Opinion.

A. Enforcing Nevada's Constitution in the manner held in this Court's Opinion does not raise any "retroactive" application of law issue.

Respondents' argument proceeds from the assumption that Article 15, Section 16, of the Nevada Constitution was not the law of Nevada until this

Court's Opinion was released on June 26, 2014. Respondents then argue applying Article 15, Section 16 of the Nevada Constitution to their conduct taking place prior to such law's "creation" date of June 26, 2014 would constitute an impermissible "retroactive application" of that law. There is no merit to either assertion.

Amendments to Nevada's Constitution become "effective upon the canvass of the votes by the supreme court." *Tovinen v. Rollins*, 560 P.2d 915, 916-917 (Nev. Sup. Ct. 1977). Article 15, Section 16, of the Nevada Constitution was enacted by the voters in the 2006 general election and became effective on November 28, 2006. *See*, N.R.S. § 293.395(2).

Article 15, Section 16, of the Nevada Constitution became the law of Nevada as of its effective date of November 28, 2006, not on the date of this Court's Opinion of June 26, 2014. Appellants are not making any claims against respondents involving conduct occurring prior to that effective date.[1] The only "prospective application" of Article 15, Section 16, of the Nevada Constitution is its application *after* November 28, 2006: "As a general rule, a constitutional amendment is to be given *only prospective application from its effective date* unless the intent to make it retrospective clearly appears from its terms." *Tovinen,* 560 P.2d at 917 (emphasis added).

This case does not present any retroactive application of law issue. The authority cited by respondents confirms that a "retroactive" application of law involves applying a new law to conduct taking place *prior* to its effective date. *See, Pub. Emps.' Benefits Program v. Las Vegas Metro. Police Dep't (PEBP)*, 179 P.3d 542, 553–54 (Nev. Sup. Ct. 2008) ("A statute has retroactive effect when it takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, ***in***

[1] The statute of limitations applicable to the appellants' claims is not before this Court and no request is made for the Court to consider that issue.

respect to transactions or considerations already past.")(emphasis provided).[2] No retroactive application of law issue is raised in respect to respondents' conduct occurring after November 28, 2006.

B. Legal rights created by the language of a newly enacted law, as opposed to those that are newly created by judicial action, are always enforced by the courts as of their specified effective date, not the later date that their validity is confirmed by the judiciary.

Respondents argue Article 15, Section 16, of the Nevada Constitution imposed no legal obligations upon them prior to this Court's Opinion of June 26, 2014, despite such provision of Nevada's Constitution otherwise having an effective date of November 28, 2006. This argument, which is tantamount to a claim that respondents have no obligation to comply with *any* duty imposed by the text of Nevada's Constitution until that duty is enforced by the Nevada Supreme Court, is not supported by any legal authority. Such assertion is also contrary to the fundamental principles of our system of justice whereby courts make substantive, and not merely future conduct, rulings about the legal rights of the parties. *See*, *Linkletter v. Walker*, 381 U.S. 618, 622 (1965) ("At common law there was no authority for the proposition that judicial decisions made law only for the future", citing 1 Blackstone, Commentaries 69 (15th ed. 1809)). The adoption of the doctrine urged by respondents, that "a new law imposes no consequences on violators until its effectiveness is confirmed by the Supreme Court of Nevada," would encourage, and reward, lawbreakers.

Respondents ask this Court to disregard nearly a thousand years of established legal doctrine and apply a grossly corrupted version of the "prospective application" of certain decisions, such as in *Linkletter*, involving new *judicially created rights* or that *overrule prior precedents*. Such decisions,

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[2] Every other authority cited by respondents, just as in *PEBP*, involves whether to apply a statute to conduct taking place *prior* to such statute's enactment and specified effective date.

none of which respondents discuss, are inapplicable to cases where a parties' rights are created by the express language of a newly enacted statute or constitutional provision. They are inapplicable because the parties whose conduct is governed by those new statutes and constitutional provisions ***have notice of the language of those new laws and are aware that they disregard the same at their peril.***

The respondents were aware of the "absolute" language of Article 15, Section 16, of the Nevada Constitution.[3] They do not argue such constitutional amendment's language, read in isolation, fails to confer the rights claimed by the appellants. They argued to the district court, and this Court, that *another law*, the previously enacted statute NRS 608.250, must be read together with the constitutional amendment and that under such a coordinated reading the rights claimed by the appellants do not exist. Respondents cannot claim any unfair prejudice as a result of this Court's rejection of their arguments.[4]

This Court's decision in *Hansen v. Harrah's*, 675 P.2d 394 (Nev. Sup. Ct. 1984) illustrates the complete lack of merit in respondents' arguments. *Hansen* created, through judicial recognition of Nevada's public policy, a tort cause of action for the retaliatory discharge of an employee who files a worker's compensation claim. No such cause of action was authorized in the text of any Nevada statute, the creation of such a cause of action was an exception to

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[3] They were also aware of the Nevada Attorney General's opinion, 05-04 Op. Atty Gen. (2005), issued before November 28, 2006, holding respondents were subject to that language.

[4] Respondents could have promptly sought a judicial declaration of their obligations after November 28, 2006 and arranged to pay into escrow, pending the issuance of such a declaration, the disputed sums now found to be owed to their employees. They declined to do so and now seek to profit from their failure to comply with the law by not having to pay any such sums accruing prior to June 26, 2014.

Nevada's well established "employment at will" law, and the creation by judicial recognition of such a cause of action had been rejected by some other state courts. 675 P.2d at 396. Nonetheless, even though the employer defendants in *Hansen* had no express advance notice that such a cause of action existed as an exception to the "employment at will" law of Nevada, this Court imposed a *current* liability for compensatory damages upon the defendant employers. *Hansen* both created a new cause of action and imposed liability for that newly recognized claim on the defendants' *prior* conduct, it did not merely determine the defendants' future legal obligations.

It is impossible to reconcile the very sound, and well grounded approach taken by this Court in *Hansen*, with the approach urged by respondents. If a party, as in *Hansen*, is liable for damages as a result of their conduct occurring *prior* to this Court's creation of a new cause action, one not set forth expressly in any written law, respondents in this case must be liable for their conduct occurring prior to June 26, 2014, which conduct was indisputably in violation of any "isolated" reading of Article 15, Section 16, of Nevada's Constitution.

CONCLUSION

Respondents must face the liability that they have brought upon themselves by violating the express terms of Nevada's Constitution. Respondents' attempt to foment another pointless appeal to this Court, by insisting this Court's June 26, 2014 Opinion does not govern their conduct prior to that date, should be extinguished by granting appellants' motion.

Dated this 19th day of October, 2014.

/s/ Leon Greenberg

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CERTIFICATE OF MAILING

The undersigned certifies that on October 19, 2014, he served the within:

APPELLANTS' REPLY TO
RESPONDENTS OPPOSITION TO
APPELLANTS' MOTION TO
CORRECT OPINION OF JUNE 26,
2014 AND STAY REMITTITUR

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

TO:

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