

**IN THE SUPREME COURT OF NEVADA**

NEVADA YELLOW CAB )  
CORPORATION, NEVADA )  
CHECKER CAB CORPORATION, and )  
NEVADA STAR CAB )  
CORPORATION' )  
Petitioners, )

vs. )

THE EIGHTH JUDICIAL DISTRICT )  
COURT of the State of Nevada, in and )  
For the County of Clark, and THE )  
HONORABLE RONALD J. ISRAEL )  
District Judge, )  
Respondents, )

and )

CHRISTOPHER THOMAS, and )  
CHRISTOPHER CRAIG, )  
Real parties in interest. )

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Case No.: A-12-661726-C

Dept. No.: XXVIII

**PETITION FOR WRIT OF MANDAMUS**

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**I.**

**RELIEF REQUESTED BY PETITIONERS**

An Order directing District Court Judge Ronald J. Israel to stay the Thomas vs. Nevada Yellow Cab Corporation, et.al. matter until this Honorable Court renders a decision in the Barbara Gilmore vs. Desert Cab, Inc., matter, Supreme Court No. 62905, Clark County District Court Case No. A-12-668502-C.

**II.**

**ISSUE PRESENTED**

Is there a common question of law currently pending before this Honorable Court in the matter of Barbara Gilmore vs. Desert Cab, Inc., Supreme Court No. 62905, Clark County District Court Case No. A-12-668502-C, that warrants a stay of the entirety of the Thomas vs. Nevada Yellow Cab Corporation, et.al. case in Clark County District Court Case No. A-12-661726-C?

**III.**

**STATEMENT OF FACTS**

1. On January 6, 2015, Petitioners filed the Motion to Dismiss. See Petitioners' Appendix **PA001-041**.
2. On January 23, 2015, Real parties in interest filed their Opposition to the Motion to Dismiss. See Petitioners' Appendix **PA042-056**.
3. On January 27, 2015, Real parties in interest filed their Supplement to their Opposition. See Petitioners' Appendix **PA057-066**.

- 1 4. Petitioners recently discovered that the Barbara Gilmore vs. Desert Cab,  
2 Inc., case, Supreme Court No. 62905, Clark County District Court Case  
3 No. A-12-668502-C, has been appealed to this Honorable Court and the  
4 Appellant is seeking to have this Honorable Court rule that the Thomas  
5 decision applies retroactively. See Petitioners' Appendix **PA067-144**.  
6  
7 5. On February 6, 2015, Petitioners filed a Reply and provided evidence of  
8 the recently discovered Barbara Gilmore vs. Desert Cab, Inc., matter and  
9 requested that the Honorable Judge Ronald J. Israel stay the entirety of the  
10 Thomas matter until this Honorable Court renders a decision in the Gilmore  
11 matter, because there is a common question of law currently pending  
12 before this Honorable Court regarding whether the Thomas decision on  
13 June 26, 2014 applies retroactively or prospectively. See Petitioners'  
14 Appendix **PA067-144**.  
15  
16 6. On February 10, 2015, the Honorable Judge Ronald J. Israel denied the  
17 Request for Stay and the Motion to Dismiss. See Petitioners' Appendix  
18 **PA145-146**.  
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IV.

**STATEMENT OF REASONING FOR THE ISSUANCE OF A WRIT**

A Writ of Mandamus is available “to compel the performance of an act that the law requires as a duty resulting from an ‘office, trust or station’ or to control an arbitrary or capricious exercise of discretion.” NRS 34.160.

Nevada Rules of Appellate Procedure Rule 8 states in pertinent part:

**(a) Motion for Stay.**

**(1) Initial Motion in the District Court.** A party must ordinarily move first in the district court for the following relief:

(A) a stay of the judgment or order of, or proceedings in, a district court pending appeal or resolution of a petition to the Supreme Court for an extraordinary writ;

**(2) Motion in the Supreme Court; Conditions on Relief.** A motion for the relief mentioned in Rule 8(a)(1) may be made to the Supreme Court or to one of its justices.

(A) The motion shall:

(i) show that moving first in the district court would be impracticable; or

(ii) state that, a motion having been made, the district court **denied the motion** or failed to afford the relief requested and state any reasons given by the district court for its action.

(B) The motion shall also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) A motion under this Rule shall be filed with the clerk and normally will be considered by a panel of the court. But in an

1 exceptional case in which time constraints make that procedure  
2 impracticable, the motion may be considered by a single justice.  
3 (E) The court may condition relief on a party's filing a bond or  
4 other appropriate security in the district court.

5 On February 10, 2015, the Honorable Judge Ronald J. Israel denied the  
6 Request for Stay and the Motion to Dismiss. Under NRAP 8(2)(A)(ii), Petitioners  
7 were not afforded with the relief requested in District Court, which was to stay the  
8 Thomas matter until this Honorable Court renders its decision in the Gilmore  
9 matter. The issue of whether the Thomas decision applies retroactively or  
10 prospectively is currently before this Honorable Court in Barbara Gilmore vs.  
11 Desert Cab, Inc. As stated in Maheu v. Eighth Judicial District, 88 Nev. 26, 493  
12 P.2d 709, at 725 (1972) (quoting Landis v. North American Co., 299 U.S. 248,  
13 254-55 (1936))

14 The power to stay proceedings is incidental to the power inherent in  
15 every court to control the disposition of the causes on its docket with  
16 the economy of time and effort for itself, for counsel, and for litigants.

17 Also, according to Mikulich v. Carner, 68 Nev. 161, 168, 228 P.2d 257, at 260  
18 (1951), when actions with **common questions of law** or fact are pending, Nevada  
19 courts can make "orders concerning the proceedings to avoid delay or unnecessary  
20 costs."

21 In this case, Petitioners recently discovered that the Gilmore matter involves  
22 a **common question of law**, which was briefed in Petitioners' Motion to Dismiss  
23 regarding whether the Thomas decision applies retroactively or prospectively from  
24

1 June 26, 2014. The question of whether the Thomas decision applies retroactively  
2 or prospectively **is a common question of law** currently pending before this  
3 Honorable Court. In the Gilmore matter, Appellant's Opening Brief contains a  
4 specific section titled, "This Court Should Expressly Advise The District Court  
5 That The Holding In Thomas v. Nevada Yellow Cab Corporation Is Not Limited  
6 To Conduct Taking Place After June 26, 2014," and argues in the Brief that the  
7 Thomas decision should apply retroactively. See Petitioners' Appendix **PA079-**  
8 **084**. In light of the current circumstances, the Thomas case must be stayed in its  
9 entirety, since Petitioners provided clear and convincing evidence in their Reply  
10 that a common question of law is present in the Gilmore matter which is currently  
11 before this Honorable Court. See Petitioners' Appendix **PA069**. To conserve  
12 judicial resources and unnecessary costs since the Gilmore matter is currently  
13 before this Honorable Court, and it involves a **common question of law**,  
14  
15 Petitioners are respectfully requesting that this Honorable Court issue an Order  
16 directing District Court Judge Ronald J. Israel to **stay the entirety of the Thomas**  
17 **case**, until this Honorable Court renders a decision on whether the Thomas  
18 decision applies retroactively or prospectively.  
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**V.**  
**CONCLUSION**

Based on the foregoing points and authorities, Petitioners respectfully request that this Honorable Court grant the Petition For Writ of Mandamus.

DATED this 27th day of March, 2015.

YELLOW CHECKER STAR  
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/s/ Tamer B. Botros  
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**Certificate of Compliance with N.R.A.P Rule 28.2**

I hereby certify that this Petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced type face using 14 point Times New Roman typeface in Microsoft Word 2013.

I further certify that this Petition complies with the page-or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 1,699 words.

Finally, I hereby certify that I have read this Petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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1 I understand that I may be subject to sanctions in the event that the accompanying  
2 Petition is not in conformity with the requirements of the Nevada Rules of  
3 Appellate Procedure.  
4

5 DATED this 27th day of March, 2015.

6 YELLOW CHECKER STAR  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that on March 27th, 2015, service of the foregoing, **PETITION FOR WRIT OF MANDAMUS** and **PETITIONERS' APPENDIX** was made by depositing same in the U.S. mail, first class postage, prepaid, addressed as follows:

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/s/ Sheila Robertson  
For **Yellow Checker Star**  
**Transportation Co. Legal Dept.**