IN THE SUPREME COURT

OF THE STATE OF NEVADA

STATE OF NEVADA, ex. rel. OFFICE OF THE LABOR COMMISSIONER; and SHANNON CHAMBERS in her official capacity as Labor Commissioner of Nevada, Appellants, v. CODY C. HANCOCK, Respondent.	Supreme Court No.: 68770 District Ct. No.: 14OC00080 On Appeal from the First Judicial District Court

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REPLY BRIEF OF THE STATE OF NEVADA, OFFICE OF THE LABOR COMMISSIONER

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I.

SUMMARY OF ARGUMENT

The minimum wage amendment, Nev. Const. art. 15 § 16, benefits Nevada workers by raising the state's minimum wage rate and ensuring that employees receive either the higher of the state's two wage rates or access to affordable employer-provided health insurance under the lower-tier wage rate. This is self-evident from an evaluation of the minimum wage amendment when read in-context.

The regulatory scheme adopted by the Nevada Labor Commissioner reflects this bargain and is faithful to the constitutional text. When Hancock attacks the regulations for not providing more in favor of lower-tier wage workers, he is in reality making a policy argument. Policy choices are not the concern of this Court. So long as the challenged regulations do not actually conflict with the minimum wage amendment, then the regulations must be upheld. As set forth in the Labor Commissioner's opening brief, and below, the regulations do not conflict with the actual standards and language of the minimum wage amendment.

This is also true where the amendment speaks of measuring the 10 percent cost cap based upon an employee's gross taxable income. It does not create any conflict with the constitutional language for the Labor Commissioner to specify that gross taxable income from the employer is to be determined by federal income tax law.

For these reasons, the decision of the district court should be reversed and the regulations should be found to be constitutional.

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II.

LEGAL ARGUMENT

A. NAC 608.100 Is Not Unconstitutional

1. Hancock's Allegation that A Lower-Tier Wage Employee Receives No Benefits Is Incorrect

Hancock contends that under the codified regulations, a lower-tier wage employee does not actually receive any of the benefits promised by the minimum wage amendment. Resp. Br. at 22. This is an inaccurate caricature of the actual operation of the administrative regulations and demonstrates a fundamental misunderstanding of the amendment's two-tier wage system.

Hancock attacks the Labor Commissioner's interpretation as creating the scenario where an employee would receive neither a wage benefit nor receive health benefits because, as Hancock points out, $7.25 per hour is already the federal minimum wage rate. Resp. Brief, p. 22. This argument is flawed from the outset because it presumes, incorrectly, that a lower-tier wage employee does not receive a wage rate benefit apart from the federal minimum wage rate.

While the lower-tier wage rate cannot drop below the federal minimum wage standard, this represents only the floor of the lower-tier wage rate. The lower-tier wage rate can and will increase above the federal minimum wage rate when dictated by increases in the consumer price index. Nev. Const. art. 15, § 16(A). For example, if the federal minimum wage were to remain at $7.25 per hour, but if changes to the consumer price index were to dictate an increase of 20¢ per hour, then the lower-tier wage rate would increase above the federal minimum wage rate to $7.45 per hour. *See* Op Nev. Att'y Gen. 2007-01 (March 23, 2007). Whether such an increase is due is calculated on an annual basis by the Labor Commissioner. Nev. Const. art. 15 § 16(A). A wage

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rate that automatically increases to keep pace with the consumer price index regardless of the stagnation in the federal minimum wage rate is, in and of itself, a tangible benefit received by all lower-tier wage employees. The presumptions that inform Hancock's arguments miss this point.

The fact that the lower-tier wage rate currently coincides with the federal wage rate does not mean that lower-tier employees cannot receive an increase in wages. In resolving this appeal the Court should consider the actual operation of the amendment, including the built-in potential for a raise in the lower-tier wage rate, rather than the snapshot-in-time upon which Hancock relies. Contrary to Hancock's contention that lower-tier wage employees receive no wage benefits under the amendment, even the lower-tier wage employees receive the benefit of a wage rate with built-in increases that are tied to the consumer price index, as well as the benefit of access to affordable employer-provided health insurance. This hardly comports with Hancock's straw-man representation of the Labor Commissioner's view of the amendment. Hancock's claim that the regulations and the minimum wage amendment leave lower-tier employees with nothing is unfounded.

2. The Requirement that an Employer Must Make Health Insurance Available is Rooted in the Constitution

In addition to misunderstanding the wage benefits and dismissing the benefit of access to insurance received by all lower-tier wage employees as nothing, Hancock also misidentifies the source of this supposed problem as the Labor Commissioner's regulations.

The concept that an employer may pay the lower-tier wage rate if it offers adequate health insurance is not initially derived not from the regulations, but from the plain language of the amendment itself. The amendment plainly speaks in terms of "offering health benefits" including the

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requirement that an employer must make the health benefits available to an employee. Nev. Const. art. 15, § 16(A). NAC 608.100(1) only reflects the constitutional language of "offering health benefits." Hancock's dispute then is not with the administrative regulations, which only reflect this view of the amendment. The dispute is really with the quality of the benefits afforded by the amendment itself, which in the eyes of Hancock do not go far enough in benefitting minimum wage workers. But this is no basis for construing the amendment contrary to its plain language, or for invalidating the regulations that reflect the constitutional text.

Hancock's answering brief is helpful for identifying the precise point at which his arguments depart from the constitutional text. In his brief, Hancock agrees with the Labor Commissioner that the definition of "offering health benefits" is indeed linked to what it meant for an employer to provide health benefits, such that each of the four elements of "offering health benefits" must be met in order for an employer to provide health benefits and lawfully pay the lower-tier wage rate. Resp. Brief at 19. That is to say that health benefits must be (1) actual health insurance; (2) must be made available to the employee; (3) must provide coverage for an employee and the employee's dependents; and (4) must satisfy the 10 percent cost cap.[1] Nev. Const. art. 15, § 16(A).

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[1] In his answering brief Hancock identifies these conditions as three conditions by collapsing the "make available" requirement and the "coverage for dependents" requirement into a single element. Resp. Brief at 19. Doing so slightly misstates the "make available" requirement. The amendment does not require an employer to offer health benefits to the employee and the employee's dependents; it requires an employer to "mak[e] health insurance available to the employee for the employee and the employee's dependents." Nev. Const. art. 15 § 16(A). This point is not trivial. Separating the "make available" requirement from the "coverage for dependents" requirement emphasizes the point that the amendment protects the employee's free choice to accept or decline health benefits.

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To these four explicit constitutional requirements, Hancock would now have this Court add a fifth condition: (5) that the employee must actually accept and enroll in the employer-provided health insurance. Resp. Brief, p. 21. This is the point at which Hancock's arguments stray from the constitutional text. An employee's acceptance of health benefits is not addressed anywhere in the constitutional text as a prerequisite to paying the lower-tier wage rate. Hancock argues that this condition should now be read into the amendment by way of an inference drawn from the word "provides." But adding this new element distorts the natural signification of the amendment's text that specifies an employer must "provide[] health benefits as described herein" and then immediately describes that action by defining what it means to "offer[] health benefits." Nev. Const. art. 15. § 16(A) (emphasis added).

The plain and natural signification of this language is that an employer sufficiently provides health benefits if it satisfies the definition of "offering health benefits." This is what was understood by Nevada voters who approved the amendment, *see Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. ___, 327 P.3d 518, 522 (Adv. Op. 52, 2014) (looking to the original public understanding of the amendment), and this is how the amendment has been understood in codified regulations without controversy for nearly a decade. JA 0294-0295. NAC 608.100(1) is faithful to this understanding of the constitutional text.

3. Hancock's Argument is A Policy Argument That Takes Issue with the Quality of the Amendment

In his answering brief Hancock attempts to overcome the defects in his position by making what amounts to essentially a policy argument based upon Hancock's view of what the bargain inherent in the amendment should be.

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This is really the crux of Hancock's entire case. Each of Hancock's arguments are based upon the notion that making health insurance available to an employee is simply not good enough and that minimum wage employees should actually receive and enroll in employer-provided health insurance or else receive the higher-tier wage rate. As stated above, this view erroneously presumes that lower-tier wage employees receive no wage benefits and dismisses the benefit of access to health insurance as inadequate. Yet it is with this view in mind that Hancock contends that actual receipt of health benefits should now be read by implication into the constitution based solely upon the word "provides."

Whether or not receipt of health insurance is preferable to access to affordable health insurance is a policy argument and should not be an issue in this appeal. The wisdom of granting employees access to affordable health insurance as the alternative to the higher wage rate goes to the policy choice of the amendment. This does not raise a judicial question. This Court has repeatedly held that it will not second-guess the wisdom of legislative policy choices. *E.g. McKay v. Board of County Commissioners of Douglas County*, 103 Nev. 490, 496, 746 P.2d 124, 127 (1987); *Caruso v. Nevada Employment Sec. Dep't*, 103 Nev. 75, 734 P.2d 224 (1987). The same principle holds true for voter-approved initiatives that amend the state constitution. *Wilson v. Koontz*, 76 Nev. 33, 38, 348 P.2d 231, 233 (1960). Nor is it within the purview of the Labor Commissioner to re-write these constitutional standards when crafting regulations. *E.g. State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 293, 995 P.2d 482, 485 (2000) (administrative regulations cannot violate the constitution).

The Court should resist Hancock's invitation to stray from the narrow domain of law and wade into the spacious domain of policy. Instead, the Court

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should construe the amendment consistent with its plain language. If the amendment's basic bargain is inadequate or needs to be altered in order to add employee-acceptance as an additional condition to pay the lower-tier wage rate, then it is the prerogative of the legislature and the people to make that policy choice and to do so. Nev. Const. art. 16 §1.

4. Hancock's Arguments Do Not Overcome the Plain Language of the Amendment

a. Liberal Construction Does Not Mean Disregard for Constitutional Text

Hancock attempts to bolster his arguments in favor of inferring an employee-acceptance requirement by advocating for a liberal construction of the amendment. This argument does not lead to the conclusion that NAC 608.100 conflicts with the amendment.

The Labor Commissioner agrees that the amendment is indeed a remedial act and as such a liberal construction to give effect to the intended benefit is appropriate. But even the preference for a liberal construction does not create license to construe the law contrary to its plain meaning. *Spencer v. Harrahs, Inc.*, 98 Nev. 99, 101-102, 641 P.2d 481, 482 (1982).

The Labor Commissioner's charge is to enforce Nevada's labor laws, NRS 607.160(1); laws which typically favor employees and employee rights. NRS 608.005; *see also Genix Supply Co. v. Bd. of Trustees of Health & Ins. Fund for Carpenters Local Union No. 971*, 84 Nev. 246, 248, 438 P.2d 816, 817 (1968) (identifying the Labor Commissioner's role in the state's "policy of providing balance to the unbalance between labor and business."). But even this broad remedial charge does not allow the Labor Commissioner to disregard constitutional standards. *E.g. Universal Elec., Inc. v. State ex rel. Office of Labor Commissioner*, 109 Nev. 127, 847 P.2d 1372 (1993). When

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crafting administrative regulations, the Labor Commissioner was obligated to remain faithful to the constitutional standards.

In this case the constitutional standard is plainly stated in the text of the amendment: to provide employees with access to affordable health insurance by requiring employers to make such health insurance available. Nev. Const. art. 15 § 16(A). A liberal construction to achieve that end would be appropriate,[2] but a liberal construction that re-writes the constitutional standards, as Hancock advocates, would not.

b. The Plain Language of "as described herein" Refers to "provides health benefits"

Hancock asserts his own version of a plain language argument, asserting that "described herein" modifies the noun "health benefits" rather than the verb "provide" and thus the verb provide may be considered in the abstract rather than fully within context. Resp. Brief, p. 19. This approach is defective because it seeks to impose a false dilemma on the Court, and is not harmonious with the plain language of the amendment. The Court need not decide whether "as described herein" refers to either the noun or the verb because it refers to both. This is not an unusual or counterintuitive application of the "as described herein" language.

By means of comparison, consider the same phrase when codified by the state of Alabama. In Alabama Code § 25-13-4, the state of Alabama prohibits work on elevators "...unless an elevator mechanic license has been issued, as described herein..." Ala. Code § 25-13-4(a). This does not force the choice to view "as described herein" as referring either to the noun (the elevator

[2] A liberal construction of this sort and with this beneficial interest in mind is presumed by NAC 608.106, which protects an employee's access to employer-provided health insurance.

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mechanic's license) or to the verb (the process of issuing the license). In this context, "as described herein" refers to both, as is evidenced from the succeeding sections that define both the process for issuing a license and the necessary attributes of the license. Ala. Code. §25-13-7(b) (describing the application process); Ala. Code. § 25-13-8 (describing qualifications for the license).

So too in the case of the minimum wage amendment. The phrase "as described herein" refers to both the verb as well as the noun. This is readily apparent from the plain language of the ensuing description which is phrased as "offering health benefits" and which addresses both the action required by an employer ("making health insurance available to the employee") as well as attributes of the required health benefits (*e.g.* the 10 percent cost cap). Nev. Const. art. 15 § 16(A). "Offering health benefits" plainly refers to the clause "provides health benefits" in its entirety by virtue of the phrase "as described herein."

Hancock's approach of splitting the verb from the noun is a conclusion-driven tactic in order to rationalize Hancock's preferred outcome. It is also unsupported by any legal authority in Hancock's brief. This court should favor an authentic plain language analysis that accounts for context over Hancock's conclusion-driven approach. Hancock has not, and cannot, point to any rational basis for splitting the verb from the noun in this instance.

c. The Plain Meaning of "Provides" Is Harmonious With the Regulatory Scheme

Hancock's final attempt to impose an acceptance requirement onto the amendment is to point to the plain meaning of the word "provides." Resp. Brief at 23 (incorporating briefing in case No. 68845 and 68754). Here too, Hancock's arguments are based upon incorrect presumptions. Hancock

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presumes that the word "provides" automatically carries with it the connotation that an employee must actually enroll in an employer's health insurance plan.

But as stated in the Labor Commissioner's opening brief, the ordinary dictionary definition of the word "provide" means "to make available." *Webster's New World College Dictionary*, 1155 (4th ed. 2002); *Merriam-Websters Collegiate Dictionary,* 941 (10th ed. 1999) (defining "provide" as "to make something available to"). While a word as common as "provide" may have multiple entries in a dictionary, when it comes to legal interpretation the Court should prefer the meaning that best harmonizes a word with the other constitutional provisions. *e.g. Guinn v. Legislature*, 119 Nev. 460, 471, 76 P.3d 22, 29 (2003). The Labor Commissioner's view that an employer must provide health insurance by making it available to an employee thus harmonizes the directive to provide health benefits with the definition of "offering health benefits" while remaining entirely consistent with the ordinary meaning of the word "provide."

Yet even if the words "offer" and "provide" do not precisely align in a thesaurus, the fact that the constitution defines "offering health benefits" as the equivalent of providing health insurance ("making health insurance available") is dispositive. When the law includes a specific definition, then that definition controls over other uses. *State, Dep't of Bus. & Indus. v. Check City*, 130 Nev. ___, 337 P.3d 755, 758 (Adv. Op. 90, 2014). The minimum wage amendment includes such a precise definition. Nev. Const. art. 15 § 16(A) ("[o]ffering health benefits within the meaning of this section…") (emphasis added). Whether phrased as "offer" or "provide," within the context of the minimum wage amendment the substantive meaning is the same – to make health insurance available.

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There is even historical precedent for reading "offer" and "provide" as synonymous in this context. The record demonstrates that the Labor Commissioner has historically used the words "provide" and "offer" interchangeably in the administrative regulations and done so without controversy and without altering the substantive requirements on an employer to make health insurance available. *Compare* JA 0294, § 2(A), 0295 § 5(A) (emergency regulations) with NAC 608.100(1)(a), NAC 608.102(2).

In the end, Hancock depends upon the rather weak canon of consistent usage, which as explained in the Labor Commissioner's opening brief, is subordinate to other canons of statutory construction and especially to the actual context in which the terms are used. *E.g. Util. Air Regulatory Grp. v. E.P.A.,* 134 S. Ct. 2427, 2441 (2014) ("...the presumption of consistent usage 'readily yields' to context...") (internal citation omitted). In this case, the context plainly indicates that the words "provide" and "offer" both entail the same action – making health insurance available. NAC 608.100(1) reflects this constitutional reality, and thus does not conflict with the amendment. The district court erred in striking down NAC 608.100(1).

B. NAC 608.104 Does Not Conflict with the Minimum Wage Amendment

Hancock makes much hay of the argument that the Labor Commissioner supposedly separates the phrase "gross taxable income" from "[income] from the employer." The Labor Commissioner's regulations do not separate these phrases, and unlike the district court's order below do give effect to the phrase in its entirety.

Hancock's argument is not persuasive because the structure of the analysis does not change the conclusion: the amendment is intended to base the 10 percent cost cap on income tax standards. In turn, these income tax

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standards count most tips as part of the income received from the employer. Thus tips are included as part of an employee's income when calculating the 10 percent cap. Unlike the district court's order, this understanding is supported by the context of the entire act, incorporates the meaning of technical terms used in the amendment, and renders no part of the amendment redundant or meaningless.

1. The 10 Percent Cost Cap Does Not Distinguish Between Tipped and Non-Tipped Employees

Contrary to Hancock's position, calculating the premium cap from the gross taxable income, including tips, is not a "tip credit against allowable premium costs." Using the figures from the same W2, admitted below, (JA 0354) tips and gratuities account for 57% of the employee's income. Using the measure of wages only, to calculate the 10 percent premium cap, the tipped worker will be subject to an effective premium cap only 4% of his taxable income. This discrepancy is where a "tip credit" exists; more than half of the employee's income escapes consideration in the measure of the premium cap.

It is nothing new to recognize that tipped employees have it better than non-tipped employees by making a higher income with tips, as tips cannot be counted toward the employee's base minimum wage rate. *Jane Roe Dancer I-VII v. Golden Coin, Ltd.*, 124 Nev. 28, 176 P.3d 271 (2008). However, it would be a something new if tipped employees were now to receive twice the benefit over non-tipped employees by receiving both a higher income and a lower-percentage cap on the health insurance premiums against their gross taxable income because no such provision exits within the minimum wage amendment. Nev. Const. art. 15 § 16(A).

The business of the Labor Commissioner is to enforce Nevada's labor laws. NRS 607.160. As such the Labor Commissioner is not able to decide by

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regulation whether different accounting rules apply to tipped or non-tipped employees when the amendment itself sets a consistent rate of 10 percent of the employee's "gross taxable income" and does so without distinguishing between tipped and non-tipped employees. Nev. Const. art. 15 § 16(A). NAC 608.104 merely reflects the standards embodied in the amendment.

2. "Gross Taxable Income From the Employer" Must be Used in its Technical Sense Within the Context of Federal Tax Law to be Given Effect

"Taxable" has no intelligible meaning outside of tax law. Terms that are borrowed from an area of law should be given the meaning they have acquired in that area of law. *Orr Ditch & Water Co. v. Justice Court*, 64 Nev. 138, 149-50, 178 P.2d 558 (1947). Because Nevada has given no specialized meaning to the term "taxable income" independent of federal income tax law,[3] the phrase must refer to federal income tax law.

"Income" also has a specialized meaning within tax law. By example, when an employer reports payroll to the federal government, it is required to include tips and gratuities exceeding a minimum threshold. 26 U.S.C. §3121(q). After exceeding that threshold, the employer must withhold and remit, on the employee's behalf, its share of payroll tax on that part of the income over which the employer had no control or input- the gratuities and tips. *Id.* Tips are "deemed to have been paid by the employer" for purposes of

[3] Nevada has not created an income tax for individual citizens, however certain businesses may be required to pay the modified business tax pursuant to NRS 363B. In this chapter of the NRS, the employer must remit taxes to the State based upon "wages as defined in NRS 612.190" and this includes both "remuneration for services" as well as reported tips. *See* NRS 363B.110 and NRS 612.190. Even in this context, Nevada law looks to federal income tax law. *See* NRS 612.190(1)(b) (referring to 26 U.S.C. §6053(a) for reportable tips).

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calculating income tax pursuant to § 3111. *Id.* Thus, the tips an employee receives are "income from the employer." Moreover, a tip is not a "gift" or gratuity to the employee as Hancock contends, at least within the specific context of income tax law. *Commissioner of Internal Revenue v. Duberstein*, 363 U.S. 278 (1960).

Finally, the amendment used the phrase "income from the employer" as the measure of the cost cap, and made no reference to the hourly rate that the employer paid. If the drafters had intended that the cap be calculated based on the hourly rate, the phrasing could have made that intent clear. *See Langon v. Washoe County,* 116 Nev. 115, 119, 993 P.2d 718 (2000). Thus, when reading the entirety of the minimum wage amendment, the use of the specialized language "gross taxable income from the employer" must be read to be consistent with federal tax law that sets the requirements for taxable income.

This is precisely what NAC 608.104(2) does. The regulation does not state a rule that the amendment requires tips to be included as income; it only defers to federal tax laws to supply the standards that determine an employee's gross taxable income from the employer. This is evident in the regulatory language that only includes tips as income "...as required for purposes of federal individual income tax." NAC 608.104(2).

Hancock's contention that this is mere *post-hoc* rationalization is unfounded and is decisively refuted by the record. From the very outset, the Labor Commissioner's office has looked to federal tax law to supply the standards to measure the 10 percent cost cap. JA 0295 § 7; JA 0330. The inclusion of most tips as taxable income is simply the result of federal income tax laws.

The language of NAC 608.104 does not conflict with the amendment. While the Labor Commissioner has emphasized the "gross taxable income"

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language in this appeal, it is precisely because this is the very constitutional language that Hancock and the district court would cast aside. Yet the Labor Commissioner's regulations do not truncate the phrase "gross taxable income from the employer" or reduce the "from the employer" tag to meaninglessness. Because the minimum wage amendment refers to the gross taxable income from the employer, it is consistent with the amendment for the Labor Commissioner to use income "attributable" to the employer in the regulation indicating the employment as the source or origin of that income, as opposed to income derived from other non-employment related sources. NAC 608.104(2). Nothing in Hancock's arguments compel the conclusion that the constitutional phrase "from the employer" and the regulatory phrase "attributable to the employer" are irreconcilable. Again, income refers to all remuneration for services received, including tips. 26 U.S.C. § 3401(a); (f). Federal income tax law is sufficiently clear that tips are deemed to be wages and thus income from the employer and the employer must include those amounts in the calculation of its tax liability on behalf of the employee.

3. All Parts of the Minimum Wage Amendment Must be Given Effect

It is another powerful canon that each sentence, phrase and word should be read to render it meaningful within the context of the purpose of the legislation. *Redl v. Heller*, 120 Nev. 75, 78, 85 P.3d 797 (2004). The amendment must be read in such a way that each part has meaning, and none of the language is rendered mere surplusage. *Torreyson v. Bd. of State Examiners,* 7 Nev. 19, 23 (1871).

If "gross taxable income from the employer" is understood to mean only the hourly wage rate, then the terms become redundant. First the amendment states that the employer shall pay a wage of not less than the hourly rates.

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After stating the two tiers of rates, the cap on premium price is introduced as an amount not to exceed 10 percent of the gross taxable income from the employer. Then in the final sentence, tips and gratuities cannot be used as credit against the minimum wage rate. By introducing these three concepts- wage rate, income, and tips and gratuities- and not using them in an interchangeable manner, they must each be given a specific meaning. NAC 608.104 does that by essentially defining income from the employer to be consistent with federal income tax laws, which include tips as income. To do as Hancock requests and make income mean only the wage rate, deprives income of any meaning. This reading should be avoided.

In Hancock's view, the 10 percent cost cap means that the premium cost cannot exceed 10 percent of the employee's income from the employer. Resp. Brief at 10. Under the interpretation advanced by Hancock the words "gross" and "taxable" have no discernable meaning. In Hancock's view the constitutional text should have read "a total cost to the employee for premiums of not more than 10 percent of the employee's income from the employer." But the actual text of the amendment does not say this. It sets forth the cost cap as "a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer." Nev. Const. art. 15 § 16(A) (emphasis added).

Only the Labor Commissioner's view, as expressed through regulation, gives effect to each word and phrase of the constitutional text.

III.

CONCLUSION

Context counts. When the language of the minimum wage amendment is read in context, rather than in isolation, it shows that the true bargain inherent in the lower-tier wage rate was to afford employees with access to affordable

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health insurance. NAC 608.100(1) reflects this bargain and reflects the language of the minimum wage amendment. Hancock's argument that receipt of health benefits is required attacks the policy of the amendment itself, but does not show any conflict between NAC 608.100(1) and the constitutional text.

NAC 608.104 properly references concepts from federal income tax law when including tips and gratuities in an employee's gross taxable income from the employer. These regulations give effect to each word and idea embodied within the minimum wage amendment.

As the regulations are faithful to the constitutional text, the Court should confirm the validity of the regulations and should reverse the decision of the district court below.

DATED this 13th day of January, 2016.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Opening Brief of the State of Nevada, Office of the Labor Commissioner complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and has been prepared in a proportionally spaced typeface using Times New Roman in font 14.

2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more and contains 4,852 words.

2. I hereby certify that I have read this Answering Brief of the State of Nevada, Local Government Employee-Management Relations Board and to the best of my knowledge, information and belief it is not frivolous or interposed for any improper purpose. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 13th day of January, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General and that on the 13th day of January, 2016, pursuant to NRAP 25(c)(1)(B), I caused the foregoing REPLY BRIEF OF STATE OF NEVADA, OFFICE OF THE LABOR COMMISSIONER to be served via the Nevada Supreme Court's electronic filing and service system E-Flex upon all parties listed on the Master Service List.

/s/ Linda M. Kapcia
An employee of the ATTORNEY GENERAL'S OFFICE

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