

IN THE SUPREME COURT OF THE STATE OF NEVADA

MDC RESTAURANTS, LLC, A NEVADA
LIMITED LIABILITY COMPANY; LAGUNA
RESTAURANTS, LLC, A NEVADA LIMITED
LIABILITY COMPANY; AND INKA, LLC, A
NEVADA LIMITED LIABILITY COMPANY,
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA, IN AND FOR THE
COUNTY OF CLARK; AND THE HONORABLE
TIMOTHY C. WILLIAMS, DISTRICT JUDGE,
Respondents,

and

PAULETTE DIAZ, AN INDIVIDUAL;
LAWANDA GAIL WILBANKS, AN
INDIVIDUAL; SHANNON OLSZYNSKI, AN
INDIVIDUAL; AND CHARITY FITZLAFF, AN
INDIVIDUAL, ON BEHALF OF THEMSELVES
AND ALL SIMILARLY-SITUATED
INDIVIDUALS,

Real Parties in
Interest.

COLLINS KWAYISI, AN INDIVIDUAL,
Appellant,

vs.

WENDY'S OF LAS VEGAS, INC., AN OHIO
CORPORATION; AND CEDAR ENTERPRISES,
INC., AN OHIO CORPORATION,
Respondents.

THE STATE OF NEVADA, OFFICE OF THE
LABOR COMMISSIONER; AND SHANNON
CHAMBERS, NEVADA LABOR
COMMISSIONER IN HER OFFICIAL
CAPACITY,

Appellants,

vs.

CODY C. HANCOCK, AN INDIVIDUAL,
Respondent.

No. 68523

Electronically Filed
Dec 04 2015 10:07 a.m.
Tracie K. Lindeman
Clerk of Supreme Court
**MOTION FOR LEAVE
TO FILE AMICUS
CURIAE BRIEF AND
PARTICIPATE IN ORAL
ARGUMENT**

No. 68754

No. 68770

ERIN HANKS,

Appellant,

vs.

BRIAD RESTAURANT GROUP, LLC, A NEW
JERSEY LIMITED LIABILITY COMPANY,

Respondent.

No. 68845

Appeal from the First Judicial District Court, Carson City
THE HONORABLE JUDGE JAMES WILSON, District Judge
District Court Case No. 14 OC 00080 1B

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND
PARTICIPATE IN ORAL ARGUMENT**

By: /s/ S. Brett Sutton

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Restaurant Association

The Nevada Restaurant Association (“NvRA”) hereby requests leave of this Court to file an *amicus curiae* brief addressing issues involved in the instant appeal.

The NvRA was founded in 1982 with the mission of supporting and protecting Nevada’s rapidly growing restaurant industry. The restaurant industry in Nevada includes more than 5,200 restaurants and food service outlets, provides jobs to roughly 200,000 people, and produces over \$6 billion in sales each year. NvRA members represent many different facets of the industry including restaurants, hotels, casinos, taverns, and vendors of restaurant goods and services. In carrying out its mission, the NvRA engages in extensive promotion of the restaurant industry, offers access to important informational resources, provides networking opportunities, and provides training and workforce development services to Association members.

Therefore, the NvRA is uniquely situated to understand the tremendous impact the issues before the Court will have on the restaurant industry—an industry that is vital to Nevada’s economic growth and well-being. A great number of the restaurant employees in Nevada regularly and customarily receive tips. Because their income is significantly supplemented by tips, most of these employees are also paid minimum wage. Accordingly, nearly every restaurant in the state stands to be significantly affected by the decision of the District Court in

Hancock v. State of Nevada, case no. 14 OC 00080 1B. On this basis, the NvRA respectfully petitions the Court for leave to file an *amicus curiae* brief in support of reversal of the District Court’s decision.

The NvRA’s *amicus* brief submits that the District Court’s decision is not compelled by Nevada law and would ultimately cause serious harm to Nevada’s restaurateurs—the majority of whom are small business owners subsisting on razor-thin margins—and, by natural extension, to the state’s restaurant industry as a whole. First, the NvRA argues that the Minimum Wage Amendment requires an employer to make a qualifying health insurance plan available to employees in order to satisfy the employer’s obligation to “provide” benefits. This comports with the language of the MWA and with the plain and ordinary meaning of the terms “provide” and “offer.” Second, the NvRA argues that the Labor Commissioner’s interpretation of “gross taxable income from the employer,” which includes tips received by employees as part of the employees’ income for purposes of calculating the employees’ maximum premium contribution under the employer’s qualifying health plan, is appropriate. Because Nevadans do not pay state income tax, the only possible meaning voters could have reasonably attributed to “gross taxable income” is the meaning it carries under federal tax law, which includes tips and gratuities.

This appeal raises issues of tremendous importance to Nevada's economy, and most notably to its restaurant industry. Accordingly, the Nevada Restaurant Industry believes that the interests of justice, as well as the interests of the People of Nevada, would be served by this Court's allowing a timely *amicus curiae* brief from an organization representing the very employers who stand to feel the impact of this Court's decision most acutely. Therefore, the NvRA respectfully requests that the Court grant it leave to file an *amicus* brief.

The NvRA's proposed *amicus curiae* brief is hereby submitted to the Court with the filing of the instant Motion. The NvRA respectfully requests that the Court permit its *amicus curiae* brief to be filed pursuant to NRAP 29.

Additionally, NvRA respectfully requests the opportunity to participate in any oral argument ordered by this Court.

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Date: December 3, 2015

CERTIFICATE OF SERVICE

I hereby certify that I a.m. an employee of Sutton Hague Law Corporation, P.C. and that on this 3rd day of December 2015, I caused to be served a true and correct copy of the above and foregoing **MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND PARTICIPATE IN ORAL ARGUMENT** via the Court's Case Management and Electronic Case Filing (CM/ECF) system and U.S. Mail, postage prepaid, properly addressed to the following:

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