

1 Amendment repealed the taxi drivers exception as provided in *NRS*  
2 *608.250(2)(e)*.<sup>78</sup>

3 Contrary to Appellant's Opening Brief, the Court in *Thomas* expressly  
4 recognized the simultaneous existence of Nevada's Minimum Wage Amendment  
5 and the prior enacted exception for taxi drivers to Nevada minimum wage laws as  
6 expressed in *NRS 608.250(2)(e)*.<sup>79</sup> Thus, prior to the Court's decision in *Thomas*,  
7 employers of taxicab drivers were lawfully permitted not to pay Nevada's  
8 minimum wage pursuant to *NRS 608.250(2)(e)*.  
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12 Only the Court's analysis in *Thomas* determined that these two (2) laws could  
13 no longer coexist (*i.e.*, be harmonized), since Nevada's Minimum Wage  
14 Amendment failed to identify taxicab drivers as a specific exception to the new  
15 definition of "employee" prescribed by Nevada's Minimum Wage Amendment.<sup>80</sup>  
16 Therefore, the Court held that *NRS 608.250(2)(e)* was "irreconcilably repugnant"  
17 to Nevada's Minimum Wage Amendment.<sup>81</sup> Consequently, this Court in *Thomas*  
18 held that the constitutional supremacy of Nevada's Minimum Wage Amendment  
19 required the implied repeal of *NRS 608.250(2)(e)* and therefore, Nevada's  
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26 <sup>78</sup> See, *130 Adv. Op. 52 at \*3-6*.

27 <sup>79</sup> See *Id.*

28 <sup>80</sup> See *Id. at \*9*.

<sup>81</sup> *Id. at \*6*.

1 Minimum Wage Amendment “supersedes and supplants” the taxi drivers  
2 exception provided by *NRS 608.250(2)(e)*.<sup>82</sup>

3       Never did this Court in *Thomas* declare that *NRS 608.250(2)(e)* did not exist  
4 prior to or because of Nevada’s Minimum Wage Amendment.<sup>83</sup> Never did this  
5 Court in *Thomas* declare that implied repeal of *NRS 608.250(2)(e)* retroactively  
6 applied to the effective date of Nevada’s Minimum Wage Amendment.<sup>84</sup>  
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8       Instead, the implied repeal of *NRS 608.250(2)(e)* was accomplished only by  
9 the Nevada’s Supreme Court holding in *Thomas* and not by the effectuation of  
10 Nevada’s Minimum Wage Amendment.<sup>85</sup> As such, both existed side by side until  
11 *Thomas*, wherein the Court held that Nevada’s Minimum Wage Amendment  
12 impliedly repealed *NRS 608.250(2)(e)*.<sup>86</sup>  
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14       The Court’s use of the present tense in *Thomas* in two (2) distinct instances  
15 cements the reality that the implied repeal of *NRS 608.250(2)(e)* was never  
16 intended to occur from the effective date of Nevada’s Minimum Wage  
17 Amendment. First, in determining that *NRS 608.250(2)(e)* was “irreconcilably  
18 repugnant” to Nevada’s Minimum Wage Amendment, the Court expressly stated  
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25 <sup>82</sup> *Id.* at \*9.

26 <sup>83</sup> *Id.* at \*6-9.

27 <sup>84</sup> *See Id.*

28 <sup>85</sup> *Id.* at \*9 (“supersedes and supplants the taxicab drivers exception set out in  
*NRS 608.250(2)*”).

<sup>86</sup> *See Id.*

1 in *Thomas* that *NRS 608.250(2)(e)* "is impliedly repealed."<sup>87</sup> In other words, the  
2 Court, using the present tense statement "is impliedly repealed," appropriately  
3 concluded and declared that going forward from its decision in *Thomas*, *NRS*  
4 *608.250(2)(e)* could no longer be used by employers of taxi drivers to avoid  
5 paying Nevada's minimum wage.<sup>88</sup> Any other ruling would unjustly penalize an  
6 entire industry and possibly lead to calamitous results for some of the cab  
7 companies.  
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10 Had the Court, which it was free to do, made use of the past tense statement,  
11 "was impliedly repealed," then the Court would have indicated that it deemed  
12 *NRS 608.250(2)(e)* repealed as of the effective date of Nevada's Minimum Wage  
13 Amendment. The Court in *Thomas* made no such past tense statement.<sup>89</sup>  
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16 Second, the Court in *Thomas* declared, "the Minimum Wage Amendment, by  
17 enumerating specific exceptions that do not include taxi drivers, supersedes and  
18 supplants the taxicab driver exception set out in *NRS 608.250(2)*."<sup>90</sup> Again, the  
19 Court in *Thomas* made use of the present tense plainly indicating that Nevada's  
20 Minimum Wage Amendment, prospectively from *Thomas*, "supersedes and  
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25 <sup>87</sup> *Id.* at \*6.

26 <sup>88</sup> *See Id.* *See also, e.g., United States v. Jackson*, 480 F.3d 1014, 1019 (9<sup>th</sup> Cir.  
27 2007) (*use of verb tense is significant*) ("words used in the present tense  
include the future as well as the present") (citations and quotations omitted).

28 <sup>89</sup> *See Id.*

29 <sup>90</sup> *Id.* at \*9. (*Emphasis Added*).

1 supplants” *NRS 608.250(2)*.<sup>91</sup> As before, the Court in *Thomas* had the ability to  
2 make use of the past tense, “superseded and supplanted,” and elected instead to  
3 make use of the present tense.<sup>92</sup>

4  
5 Appellant’s Opening Brief makes no argument regarding the Court’s use of  
6 the present tense in *Thomas*.<sup>93</sup> Nonetheless, the *Thomas* Court’s election to make  
7 use of the present tense plainly demonstrates the Court’s intention only to hold  
8 *Thomas* and the implied repeal of *NRS 608.250(2)(e)* effective prospectively from  
9 the Court’s decision rendered on July 26, 2014.<sup>94</sup> As such, the effective date of  
10 Nevada’s Minimum Wage Amendment does not determine in any way the  
11 Court’s implied repeal of *NRS 608.250(2)(e)* pursuant to *Thomas* or the date for  
12 determining when the employers of taxi drivers were required to pay Nevada’s  
13 minimum wage.  
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17 In addition, Appellant’s reliance on the Court’s decision in *Hansen v.*  
18 *Harrah’s* has no merit and the actual application of *Hansen* supports the  
19 prospective application only from the date of the Court’s decision in *Thomas*.  
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21 Appellant’s Opening Brief declares that *Hansen* somehow “illustrates the  
22 complete fallaciousness of the claim that *Thomas* has no application” to conduct  
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26 <sup>91</sup> *See Id.*

27 <sup>92</sup> *Id.*

28 <sup>93</sup> *See generally, Appellant’s Opening Brief.*

29 <sup>94</sup> *See supra.*



1 that occurred prior thereto<sup>95</sup> However, the Court's decision in *Hansen* is  
2 distinguishable and in fact supportive of such a claim. In *Hansen*, the Court first  
3 considered "whether Nevada should adopt the public policy exception to the at-  
4 will employment rule recognizing as a proper cause of action retaliatory discharge  
5 for filing a workmen's compensation claim."<sup>96</sup> As an exception to Nevada's  
6 common law at-will employment rule, the Court in *Hansen* adopted, as a common  
7 law claim in tort, a claim for retaliatory discharge for an injured person's  
8 wrongful discharge in response to that injured person's filing of a worker's  
9 compensation claim.<sup>97</sup>

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11 Unlike *Hansen*, neither *Thomas* nor this matter is concerned with the  
12 application of Nevada's common law at-will employment rules or any other  
13 common law rules or claims.<sup>98</sup> Further, *Hansen*, unlike *Thomas*, never concerned  
14 itself with the application of a decision by the Nevada Supreme Court implicitly  
15 repealing a Nevada statute.<sup>99</sup> Instead, the Court in *Hansen* made use of its  
16 exclusive power to create a common law claim in tort to support Nevada's public  
17 policy of protecting injured workers.<sup>100</sup> Accordingly, the Court's decision in  
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25 <sup>95</sup> *Id.* at \*8.

26 <sup>96</sup> *Hansen v. Harrah's*, 100 Nev. 60, 62, 675 P.2d 394, 396 (1984).

27 <sup>97</sup> *See Id.* at 64-65.

28 <sup>98</sup> *See generally*, 130 Nev. Adv. Op. 52, and Appellant's Opening Brief at 8-9.

29 <sup>99</sup> *See*, 100 Nev. at 63-65.

30 <sup>100</sup> *See Id.* at 64-65.

1 *Hansen* to create a new common law claim in tort for retaliatory discharge has no  
2 application or influence on the application of the Court's decision in *Thomas*  
3 implicitly repealing NRS 608.250 because of Nevada's Minimum Wage  
4 Amendment.  
5

6 Appellant also contends that the Court in *Hansen* "imposed a current liability"  
7 on the employer in *Hansen* based on that employer's "prior conduct" even though  
8 the employers in *Hansen* had no advance notice of the newly created common  
9 law claim for retaliatory discharge.<sup>101</sup> Appellant's declaration actually is contrary  
10 to the Court's decision in *Hansen*.  
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13 First, the Court in *Hansen* never imposed any liability on any party.<sup>102</sup>  
14 Instead, the Court in *Hansen*, after creating an entirely new common law claim in  
15 tort, specifically remanded the matter to the District Court without imposing any  
16 liability whatsoever on any party.<sup>103</sup>  
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19 Second, the Court in *Hansen* expressly considered whether punitive damages  
20 were available to a party who prevails on the newly created claim for retaliatory  
21 discharge.<sup>104</sup> In *Hansen*, the Court found that punitive damages were available to  
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26 <sup>101</sup> Appellant's Opening Brief at 8-9.

27 <sup>102</sup> See, 100 Nev. at 65.

28 <sup>103</sup> See *Id.*

<sup>104</sup> See *Id.*

1 a party prevailing on such a claim, but not in that case.<sup>105</sup> Although not discussed  
2 in Appellant's Opening Brief, the Court in *Hansen* specifically found that the  
3 imposition of punitive damages "would be unfair" since the Court determined it  
4 was impossible for employers to know beforehand that their conduct was now,  
5 because of *Hansen*, actionable in Nevada.<sup>106</sup> The Court in *Hansen* therefore  
6 determined that these same unknowing employers could not be punished for such  
7 conduct.<sup>107</sup> As such, the Court in *Hansen* expressly held that if the employees in  
8 *Hansen* prevailed in trial, they still were prohibited from obtaining an award of  
9 punitive damages against their employers.<sup>108</sup>

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13 It is the Court's analysis of the "Second" Issue in *Hansen* that actually  
14 supports the prospective application of *Thomas* only from the date of decision.  
15 Like the employers in *Hansen*, Respondent, as an employer of Appellant, a  
16 taxicab driver, had no knowledge prior to *Thomas* that its reliance on the taxicab  
17 driver exception set out in *NRS 6082.250(2)(e)* to not pay minimum wage was no  
18 longer valid.<sup>109</sup> Appellant's Opening Brief declares that Respondent had such  
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26 <sup>105</sup> *See Id.*

27 <sup>106</sup> *Id.*

28 <sup>107</sup> *See Id.*

<sup>108</sup> *See Id.*

<sup>109</sup> *See supra.*

1 “knowledge,” but fails to reference any facts or allegations demonstrating such  
2 alleged knowledge.<sup>110</sup>

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4 Like the employers in *Hansen*, Respondent had no possibility of knowing that  
5 that taxicab driver exception to Nevada’s minimum wage laws was going to be  
6 found years later, “irreconcilably repugnant” because of this Court’s decision in  
7 *Thomas*.<sup>111</sup> To date, four (4) sessions and five (5) special sessions of Nevada’s  
8 Legislature convened and closed since the 2006 enactment of Nevada’s Minimum  
9 Wage Amendment.<sup>112</sup> None of those sessions enacted any law repealing *NRS*  
10 *608.250* or recognized the possible conflict or “irreconcilable repugnancy” of this  
11 statute in light of the passage and enactment of Nevada’s Minimum Wage  
12 Amendment.  
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16 Further, Nevada’s Labor Commissioner, until this Court’s decision in *Thomas*,  
17 identified, recognized, and enforced all of the exceptions to Nevada’s minimum  
18 wage laws as set forth in *NRS 608.250*. Finally, as recognized in Appellant’s  
19 Opening Brief, at least six other District Courts, and in one instance, the United  
20 States District Court for Nevada, previous to *Thomas*, held that the taxicab driver  
21 exception provided by *NRS 608.250* remained enforceable despite Nevada’s  
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27 <sup>110</sup> See Appellant’s Opening Brief at 6-7.

28 <sup>111</sup> See *supra*.

<sup>112</sup> 74<sup>th</sup> through 77<sup>th</sup> Sessions and 23<sup>rd</sup> through 27<sup>th</sup> Special Sessions.

1 Minimum Wage Amendment.<sup>113</sup> In other words, every branch of Nevada's  
2 government recognized for nearly eight (8) years after the passage and enactment  
3 of Nevada's Minimum Wage Amendment that employers of taxi drivers were still  
4 exempt from paying Nevada's minimum wage. As such, it was impossible for  
5 Respondent, as an employer of taxi drivers such as Appellant, to have any  
6 knowledge that their alleged failure to pay Nevada's minimum was somehow  
7 unlawful and actionable prior to this Court's decision in *Thomas*.<sup>114</sup>  
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10 As a result, the retroactive application of the Court's decision in *Thomas*, as  
11 in *Hansen*, would be completely unjust and unfair to Respondent since it was  
12 impossible for Respondent to know that *NRS 608.250(2)(e)* was "irreconcilably  
13 repugnant" to Nevada's Minimum Wage Amendment.<sup>115</sup> Such "irreconcilable  
14 repugnancy" only arose by operation of this Court's decision *Thomas*.  
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16  
17 Consequently, applying *Thomas* retroactively against Respondent, as argued  
18 for by Appellant, would unjustly punish Respondent in the same manner as the  
19 employers in *Hansen*. Therefore, as in *Hansen*, the Court's decision in *Thomas*  
20 should not apply to Respondent so that Respondent would not be unfairly  
21 punished by the Court's implied repeal of *NRS 608.250(2)(e)*.<sup>116</sup>  
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26 <sup>113</sup> See Appellant's Opening Brief at 4-5.

27 <sup>114</sup> Accord, *Hansen*, 100 Nev. at 65.

28 <sup>115</sup> See *Id.*

<sup>116</sup> See *Id.*

1 Thus, the Court's decision in *Hansen* fails to support Appellant's argument on  
2 appeal. Further, the Court's determination in *Hansen* that it would be unfair to  
3 employers to be subject to punitive damages where they had no prior indication  
4 that their conduct was actionable, demonstrates the Court's willingness to  
5 consider the effect of its decision on those parties, who like Respondent had  
6 engaged in lawful business practices until the Court's decision to repeal.<sup>117</sup>  
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### 9 VII. CONCLUSION

10 Pursuant to the arguments provided above, the District Court did not error  
11 in any way by granting Respondent's Motion to Dismiss Appellant's Complaint.  
12 Appellant failed to provide any arguments or assignments of error on appeal that  
13 concern Respondent's actual Motion to Dismiss.  
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16 Based upon the foregoing, Respondent respectfully requests that this  
17 Honorable Court uphold the District Court's Order Granting Respondent's  
18 Motion to Dismiss Appellant's Complaint.  
19

20 DATED this 1<sup>st</sup> day of December, 2014.

21 /s/Jeffery A. Bendavid

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<sup>117</sup> *See Id.*

# EXHIBIT "F"



3 of 10 DOCUMENTS

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEVADA

OPINION No. 2005-04

2005 Nev. AG LEXIS 4

March 2, 2005

**SYLLABUS:**

[\*1]

**BALLOTS; LABOR COMMISSIONER; WAGES:** Notwithstanding the conclusion that the proposed amendment would effect an implied repeal of the provisions for calculation of the minimum wage and minimum wage entitlement found in *NRS 608.250*, the statutory exclusions from overtime compensation and the provisions of *NRS 608.250* relied upon in *NRS 608.018*, would stand as enacted for purposes of the overtime compensation law.

**REQUESTBY:**

Michael Tanchek, Nevada Labor Commissioner  
Office of the Labor Commissioner  
Department of Business and Industry  
675 Fairview Drive, Suite 226  
Carson City, Nevada 89701

**OPINIONBY:**

BRIAN SANDOVAL, Attorney General; PATRICIA PALM GASPARINO, Deputy Attorney General, Civil Division

**OPINION:**

As the Nevada Labor Commissioner, you are requesting an opinion regarding the potential effect of the amendment to the Nevada Constitution as proposed by the initiative placing Question No. 6, "Raise the Minimum Wage for Working Nevadans Act," on the 2004 General Election Ballot. Your questions concern the consequences of such an amendment upon Nevada's existing statutory framework for minimum [\*2] wage and overtime compensation benefits. Notwithstanding the recent introduction of Assembly Bill 87 in the current session of the Nevada Legislature, the issues and conclusions of this opinion should be shared with appropriate legislative committees for consideration of prudent anticipatory statutory amendments to current laws that will be impacted by any passage of Question No. 6 amending the Nevada Constitution.

**GENERAL BACKGROUND INFORMATION**



Currently under *NRS 608.250*, certain employees in private employment are entitled to minimum wages at a rate to be established by the Nevada Labor Commissioner in accordance with federal law. Nevada's overtime compensation statute, *NRS 608.018*, incorporates select provisions of the minimum wage law at *NRS 608.250* to delineate which employees are excluded from entitlement to statutory overtime compensation. Complimenting these Nevada laws, the Fair Labor Standards Act of 1938, as amended (FLSA), at 29 U.S.C.A. § 201 *et seq.*, sets forth the minimum wage and overtime compensation benefits [\*3] required by federal law. n1 Under the FLSA, the general minimum wage rate is set at \$ 5.15 per hour. 29 U.S.C.A. § 206(a)(1) (1998). In accordance therewith, the Nevada Labor Commissioner has also set Nevada's general minimum wage rate at \$ 5.15 per hour. *NAC 608.110(1)*.

n1 Although states remain free to enact their own laws governing minimum wages and overtime benefits, compliance with state legislation will not excuse noncompliance with the FLSA. 29 U.S.C.A. § 218(a) (1998); *Alaska Int'l Indus., Inc. v. Musarra*, 602 P.2d 1240, 1246 (Alaska 1979).

Ballot Question No. 6, which is aimed at raising Nevada's minimum wage rate, stemmed from an initiative petition. See Nev. Const. art. 19, § 2 (reserving to the people the power to propose, by initiative petition, amendments to the constitution, and to enact or reject them at the polls); *Garvin v. Ninth Judicial Dist. Court ex rel. County of Douglas*, 118 Nev. 749, 751, 59 P.3d 1180, 1181 (2002) [\*4] (discussing the initiative power). The initiative proposes to amend Article 15 of the Nevada Constitution to add the following section addressing minimum wages:

*Sec. 16. Payment of minimum compensation to employees. A. Each employer shall pay a wage to each employee of not less than the hourly rates set forth in this section. The rate shall be five dollars and fifteen cents (\$ 5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents (\$ 6.15) per hour if the employer does not provide such benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer. These rates of wages shall be adjusted by the amount of increases in the federal minimum wage over \$ 5.15 per hour, or, if greater, by the cumulative increase in the cost of living. The cost of living increase shall be measured by the percentage increase as of December 31 in any year over the level as of December 31, 2004 [\*5] of the Consumer Price Index (All Urban Consumers, U.S. City Average) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency. No CPI adjustment for any one-year period may be greater than 3%. The Governor or the State agency designated by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1. Such bulletin will be made available to all employers and to any other person who has filed with the Governor or the designated agency a request to receive such notice but lack of notice shall not excuse noncompliance with this section. An employer shall provide written notification of the rate adjustments to each of its employees and make the necessary payroll adjustments by July 1 following the publication of the bulletin. Tips or gratuities received by employees shall not be credited as being any part of or offset against the wage rates required by this section.*

*B. The provisions of this section may not be waived by agreement between an individual employee and an employer. All of the provisions of this section, or any part hereof, may be waived in [\*6] a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this section. An employer shall not discharge, reduce the compensation of or otherwise discriminate against any employee for using any civil remedies to enforce this section or otherwise asserting his or her rights under this section. An employee claiming violation of*

*this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs.*

*C. As used in this section, "employee" means any person who is employed by an employer as defined herein [\*7] but does not include an employee who is under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period of not longer than ninety (90) days. "Employer" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts of employment.*

*D. If any provision of this section is declared illegal, invalid or inoperative, in whole or in part, by the final decision of any court of competent jurisdiction, the remaining provisions and all portions not declared illegal, invalid or inoperative shall remain in full force or effect, and no such determination shall invalidate the remaining sections or portions of the sections of this section.*

#### Compilation of Ballot Questions 2004, Question No. 6, § 3.

A majority of Nevada voters voting on Question No. 6 in the 2004 general election approved the proposed constitutional amendment. However, before the proposed amendment can become effective, the Secretary of State must resubmit the question for its approval by the voters in the 2006 general election. [\*8] If a majority of the 2006 general election voters also approve the proposed amendment, it will become part of the Nevada Constitution upon certification of the election results. Nev. Const. art. 19 § 2(4); NRS 295.035.

#### QUESTION ONE

Would the provisions of NRS 608.250 through NRS 608.290 be voided by the successful passage of the proposed amendment?

#### ANALYSIS

Neither the arguments for or against the initiative's passage nor the text of the proposed constitutional amendment refer directly to the existing minimum wage statutes. *See* Compilation of Ballot Questions 2004, Question No. 6. Even so, the primary focus of the initiative is on raising the current Nevada minimum wage of \$ 5.15 per hour, which wage is established pursuant to the statutory scheme. Thus it unmistakably appears that the voters intended for the proposed amendment to transform the existing statutory framework for minimum wages. The extent of the transformation that would actually be affected depends upon the extent of conflict between the proposed amendment and the existing statutes.

A constitutional [\*9] amendment, ratified subsequent to the enactment of a statute, is controlling on any point covered in the amendment. *State ex rel. Nevada Orphan Asylum v. Hallock*, 16 Nev. 373, 378 (1882). Further, ratification of a constitutional amendment will render void any existing law that is in conflict with the amendment. *Op. Nev. Att'y Gen.* 08 (May 19, 1908); *see also* 16 AM. JUR. 2d *Constitutional Law* § 68 (1979) (if there is a conflict between a statute and a subsequently adopted constitutional provision, the statute must give way). We now consider the relevant statutory provisions in turn.

#### NRS 608.250

#### Responsibility for Wage Calculation

*NRS 608.250* governs the minimum wage for private employment and provides as follows:

1. Except as otherwise provided in this section, the Labor Commissioner shall, in accordance with federal law, establish by regulation the minimum wage which may be paid to employees in private employment within the State. The Labor Commissioner shall prescribe increases in the minimum wage in accordance with those prescribed by [\*10] federal law, unless he determines that those increases are contrary to the public interest.

2. The provisions of subsection 1 do not apply to:

- (a) Casual babysitters,
- (b) Domestic service employees who reside in the household where they work.
- (c) Outside salespersons whose earnings are based on commissions.
- (d) Employees engaged in an agricultural pursuit for an employer who did not use more than 500 man-days of agricultural labor in any calendar quarter of the preceding calendar year.
- (e) Taxicab and limousine drivers.
- (f) Severely handicapped persons whose disabilities have diminished their productive capacity in a specific job and who are specified in certificates issued by the Rehabilitation Division of the Department of Employment, Training and Rehabilitation.

3. It is unlawful for any person to employ, cause to be employed or permit to be employed, or to contract with, cause to be contracted with or permit to be contracted with, any person for a wage less than that established by the Labor Commissioner pursuant to the provisions of this section.

This statute's provisions for calculation of the minimum wage and the responsibility therefor are completely covered by and conflict [\*11] with the corresponding provisions of the proposed amendment. First, like *NRS 608.250*, the proposed amendment provides a comprehensive minimum wage calculation method which is applicable to private employment. *See Proposed Amendment, § 16(A),(C)* (setting forth a minimum wage calculation applicable to "any . . . entity that may employ individuals or enter into contracts of employment").

Second, obvious conflict is revealed when comparing the competing methods of wage calculation. Specifically, *NRS 608.250(1)* requires that the Labor Commissioner, "in accordance with federal law, establish . . . the minimum wage" and "prescribe increases in the minimum wage in accordance with those prescribed by federal law, unless he determines that those increases are contrary to the public interest." By the terms of these provisions, the minimum wage rate cannot be higher than the federal minimum wage rate (which is currently \$ 5.15 per hour). However, the proposed amendment sets the minimum wage rate at either \$ 5.15 or \$ 6.15 per hour, depending upon whether an employer provides sufficient health benefits. The proposed [\*12] amendment also vests the Governor or a state agency designated by him with the responsibility of publishing adjustments to the minimum wage and requires those adjustments to be based upon increases in the federal minimum wage or increases in the Consumer Price Index not to exceed 3% per year, whichever is greater. *See Proposed Amendment, § 16(A)*.

Based on this overlapping and contradictory coverage, the existing statutory provisions would not survive the proposed amendment. Instead, the proposed amendment would supplant and repeal by implication the provisions of *NRS 608.250* for wage calculation and the responsibility therefor.

#### Exclusions Based on Employee Type

Also apparent from a comparison of the proposed amendment and statute is the disagreement on the issue of which

employees are entitled to minimum wages. *NRS 608.250(2)* sets forth various exclusions from the statutory minimum wage entitlement for certain types of employees, *i.e.*, casual babysitters, domestic service employees who reside in the household where they work, etc. However, *NRS 608.250* [\*13] does not provide any exclusion which is based on an employee's age, n2 the nonprofit status of an employer, or training periods of employment. In contrast, the proposed amendment does not exclude from its minimum wage coverage the types of employees listed at *NRS 608.250(2)*, except to the extent that those types of employees may also be "under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days." Proposed Amendment, § 16(C) (defining "employee" for coverage purposes to exclude certain employees under age eighteen).

n2 Previously, *NRS 608.250* expressly allowed for a minimum wage for minors that was eighty-five percent of the minimum wage for adults; however, the pertinent statutory language was deleted in 2001 when the statute was amended to allow the Labor Commissioner to establish prevailing wages in accordance with federal law. *See* 2001 Nev. Stat., ch. 90, § 9, at 564-65. *Cf. NAC 608.110(2)* (setting forth a lesser minimum wage for employees under age eighteen).

[\*14]

The effect of the proposed amendment on the *NRS 608.250* exclusions is controlled by two presumptions. First, the voters should be presumed to know the state of the law in existence related to the subject upon which they vote. *Op. Nev. Att'y Gen. 153* (December 21, 1934). Second, it is ordinarily presumed that "where a statute is amended, provisions of the former statute omitted from the amended statute are repealed." *McKay v. Board of Supervisors*, 102 Nev. 644, 650, 730 P.2d 438, 442 (1986). In keeping with these presumptions, the people, by acting to amend the minimum wage coverage and failing to include the statutory exclusions in the proposed amendment, are presumed to have intended the repeal of the existing exclusions so that the new minimum wage would be paid to all who meet its definition of "employee." Accordingly, the proposed amendment would effect an implied repeal of the exclusions from minimum wage coverage at *NRS 608.250(2)*.

#### *NRS 608.260*

##### Civil Court Remedies for Evasion of Minimum Wage Laws

Each competing minimum wage scheme provides a complete [\*15] civil court remedy for evasion of its requirements. *See NRS 608.260* (stating, in part, "The employee may, at any time within 2 years, bring a civil action to recover the difference between the amount paid to the employee and the amount of the minimum wage."); *compare* Proposed Amendment, § 16(B) (an employee may bring an action against his employer in the courts of this state and shall be entitled to all appropriate remedies available under the law or in equity, including back pay, damages, reinstatement or injunctive relief, and if prevailing, shall be entitled to reasonable attorney's fees and costs). As the proposed amendment has completely covered the topic of a civil court remedy, providing for even greater relief, its remedy would supplant and repeal by implication the existing civil remedy provision at *NRS 608.260*.

#### *NRS 608.270(1)* and *NRS 608.290(2)*

##### Administrative Enforcement of Minimum Wage Laws

*NRS 608.270(1)(a)* states that the "Labor Commissioner shall . . . administer and enforce the provisions of *NRS 608.250* [\*16] ." In addition, *NRS 608.290(2)* provides with regard to violations of *NRS 608.250* that "in addition to any other remedy or penalty, the Labor Commissioner may impose against the person an administrative penalty of not more than \$ 5,000 for each such violation." The presumptive partial repeal of *NRS 608.250* notwithstanding, legal authority suggests that the proposed amendment would serve to modify these statutes as necessary to effectuate their continued use in enforcing the new minimum wage law.

The proposed amendment is silent with respect to the administrative enforcement authority of the Labor Commissioner and his imposition of administrative sanctions. Where, as here, "express terms of repeal are not used, the presumption is always against an intention to repeal an earlier statute, unless there is such inconsistency or repugnancy [between the laws] as to preclude the presumption, or the [new law] revises the whole subject-matter of the former. [Citations omitted.]" *Ronnow v. City of Las Vegas*, 57 Nev. 332, 365, 65 P.2d 133, 145 (1937). [\*17] [Text altered.] The statutes in question here are consistent with the basic provisions of the proposed amendment.

The minimum wage changes proposed by Question No. 6, though materially different in wage outcome, applicability and civil court remedy, essentially create a new method of calculating the wage rate and do not attempt to alter the underlying current statutory basis for administrative enforcement of the new wage by the Labor Commissioner. By providing for a higher minimum wage and a more extensive civil court remedy, the people intended to strengthen an employee's ability to assert his right to the minimum wage. The current administrative enforcement jurisdiction of the Labor Commissioner is well-suited to serve this general purpose, and it merely strengthens what the proposed amendment seeks to guaranty. See *Washington v. State*, 117 Nev. 735, 739, 30 P.3d 1134, 1136 (2001) (statutes must be interpreted consistently with their general purposes); see also *Rogers v. Heller*, 117 Nev. 169, 176 n.17, 18 P.3d 1034, 1038 n.17 (2001) (recognizing that rules of statutory construction apply [\*18] to constitutional provisions).

The current minimum wage statutes evidence the Legislature's clear intent that the Labor Commissioner should enforce Nevada's minimum wage law and impose administrative sanctions for violations thereof. Additionally, *NRS 607.160(1)(a)(2)* provides that "the Labor Commissioner . . . shall enforce *all labor laws* of the State of Nevada . . . the enforcement of which is not specifically and exclusively vested in any other officer, board or commission." [Emphasis added.] *NRS 607.160(3)* -- (6) contemplate the Labor Commissioner will impose administrative penalties and pursue administrative and civil actions for violation of Nevada's labor laws. Further, *NRS 607.170(1)* allows the Labor Commissioner to prosecute claims and commence actions to collect wages for any person who is unable to afford counsel.

The intent behind the administrative enforcement provisions at *NRS 608.270(1)(a)* and *NRS 608.290(2)*, i.e., that the Labor Commissioner shall enforce the state's [\*19] minimum wage law, is likely to prevail despite the specific references to *NRS 608.250* in *NRS 608.270(1)(a)* and *NRS 608.290*. *McKay*, 102 Nev. at 650, 730 P.2d at 443 (the intent behind a law will prevail over the literal sense of the words used in the law). However, given the specific references to *NRS 608.250* in *NRS 608.270(1)(a)* and *NRS 608.290*, it is conceivable that a court of law could find the Legislature intended the existing enforcement statutes apply only to the minimum wage as calculated under *NRS 608.250*, and not recognize the amendment to the Nevada Constitution as merely augmenting the statutes establishing the Labor Commissioner's pre-amendment administrative enforcement authority. If so, the intent behind existing statutes would be upset by allowing them to stand as enforcement tools for the new law, and the statutes should be treated as repealed. [\*20] See *City and County of San Francisco v. County of San Mateo*, 896 P.2d 181, 195 (Cal. 1995) (Mosk, J., concurring) (existing statutes must be treated as repealed if the intent behind them would be thwarted by allowing them to stand in the face of a constitutional amendment). On the other hand, the more likely and appropriate conclusion is that the proposed amendment would modify these enforcement statutes to allow for the Labor Commissioner's enforcement of the new minimum wage law. Cf. *Perry v. Consolidated Special Tax Sch. Dist. No. 4*, 103 So. 639, 642 (Fla. 1925) (recognizing that previous statutory provisions, as modified by constitutional amendment, are sufficient to effectuate new constitutional provisions so that new provisions may be enforced even though they are not contained in or contemplated by present statutes).

*NRS 608.270(1)(a), (2), NRS 608.280, and NRS 608.290(1)*

#### Criminal Enforcement of Minimum Wage Laws

*NRS 608.270(1)(a)* and (2) establish that the district attorneys will prosecute [\*21] violations of *NRS 608.250* and, for the willful failure to do so, will be subject to a misdemeanor conviction and removal from office. In addition, *NRS 608.280* requires the Attorney General to prosecute willful violations of *NRS 608.270*. Finally, *NRS 608.290(1)* also

makes the violation "of *NRS 608.250* or any regulation adopted pursuant thereto" a misdemeanor. For the same reasons given in the preceding section of this opinion (addressing the proposed amendment's effect upon the Labor Commissioner's administrative enforcement authority), it is also likely that a court would find that the proposed amendment only modifies, rather than repeals, the existing criminal enforcement statutes. In short, by enacting these criminal statutes the Legislature plainly intended that criminal sanctions would be used as a tool to enforce the state minimum wage law. Although, as with the provisions discussed in the preceding section, it is possible that a court could determine that the Legislature's intent [\*22] is ambiguous with respect to application of the criminal enforcement statutes to the new minimum wage law. After considering this risk, the reasonable and fair conclusion is that the legislative intent behind the existing provisions is consistent with using these provisions to enforce the new minimum wage law. The criminal enforcement statutes are also consistent with the proposed amendment's apparent purpose of strengthening an employee's ability to collect minimum wages. The people, by presumption, were aware of the law's provisions when voting in favor of the proposed amendment. *See* Op. Nev. Att'y Gen. 153 (December 21, 1934). As both the initiative and the proposed amendment are silent as to repeal of the criminal enforcement provisions, these provisions are likely to survive as modified to effectuate their continued use as an enforcement tool for the new minimum wage law. *See Romnow v. City of Las Vegas*, 57 Nev. at 332, 365, 65 P.2d 133, 145 (1937).

#### CONCLUSION TO QUESTION ONE

If the proposed constitutional amendment is approved at the 2006 general election as established by certified election results, it would supplant and [\*23] repeal by implication the wage calculation and coverage provisions of *NRS 608.250* and the civil remedy of *NRS 608.260*. *NRS 608.270(1)* and *NRS 608.290(2)* would likely be found to have been modified as necessary to effectuate the Labor Commissioner's enforcement of the new minimum wage. The criminal enforcement provisions of *NRS 608.270(1)(b)* and (2), *NRS 608.280*, and *NRS 608.290(1)* also would likewise be found to be modified to allow for their continued use in enforcing the new minimum wage law.

#### QUESTION TWO

Would the passage of the proposed amendment require the payment of the minimum wage to those types of employees currently excluded under *NRS 608.250(2)*?

#### ANALYSIS

As discussed in response to Question One above, the proposed amendment does not contain any of the exceptions to coverage currently set forth at *NRS 608.250(2)* [\*24]. The only exception under the proposed amendment is for employees who are "under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days." Proposed Amendment, § 16(C) (defining "employee" for coverage purposes to exclude certain employees under age eighteen). In light of this, the exclusions under *NRS 608.250* are repugnant to the proposed amendment, the plain wording of which requires payment of the minimum wage regardless of whether an employee is currently excluded under *NRS 608.250(2)*. Consequently, the proposed amendment would effect an implied repeal of the exclusions set forth at *NRS 608.250* from minimum wage coverage.

#### CONCLUSION TO QUESTION TWO

The proposed amendment would require payment of the new minimum wage to employees who are currently excluded under *NRS 608.250(2)* from entitlement to minimum wages, unless those employees fall outside the amendment's definition of a protected "employee."

#### QUESTION [\*25] THREE

Does the language of Section 16(B) of the proposed amendment specifically and exclusively vest the enforcement of the minimum wage provisions with the courts, so as to preempt the enforcement jurisdiction of the Labor

Commissioner?

#### ANALYSIS

Your question alludes to the language of *NRS 607.160(1)(a)(2)*, which states, "The Labor Commissioner . . . shall enforce all labor laws of the State of Nevada . . . the enforcement of which is not specifically and exclusively vested in any other officer, board or commission." As discussed in response to Question One above, the provisions of *NRS 607.160* and *NRS 607.170*, as well as the provisions under *NRS 608.270(1)(a)* and *NRS 608.290(2)*, demonstrate the Legislature's intent that the Labor Commissioner enforce Nevada's minimum wage law, even as amended or supplanted by the instant initiative. Therefore, the proposed amendment would likely only modify the existing statutes as needed for such enforcement. The proposed amendment's civil remedy [\*26] at section 16(B) would supplant the existing statutory civil remedy at *NRS 608.260*, but this would have no additional affect on the existing statutes providing for the Labor Commissioner's enforcement jurisdiction in other areas.

Moreover, section 16(B) of the proposed amendment provides, in relevant part, that an employee "may bring an action against his or her employer in the courts of this State to enforce the provisions of this section." [Emphasis added.] The use of the word "may" in this context indicates that the remedy is intended to be permissive and it does not indicate exclusivity of the remedy. *D'Angelo v. Gardner*, 107 Nev. 704, 721 n.11, 819 P.2d 206, 217 n.11 (1991); *Ewing v. Fahey*, 86 Nev. 604, 608, 472 P.2d 347, 350 (1970). Indeed, the analogous provision currently set forth in *NRS 608.260* states that an "employee may . . . bring a civil action," and this remedy coexists with other statutes providing for enforcement by the Labor Commissioner. Thus the proposed amendment's civil remedy at section [\*27] 16(B) does not specifically and exclusively vest authority elsewhere or divest the Labor Commissioner of all of his jurisdiction.

#### CONCLUSION TO QUESTION THREE

Section 16(B) of the proposed amendment does not interfere with all of the enforcement jurisdiction of the Labor Commissioner. It is likely that authority not specifically in contradiction to the amendment would survive a legal challenge.

#### QUESTION FOUR

Would preemption of *NRS 608.250* have any effect on the statutory exclusions from entitlement to overtime compensation set forth in *NRS 608.018*?

#### ANALYSIS

The overtime compensation statute, *NRS 608.018*, should not be affected by the proposed amendment, even though it partially relies on *NRS 608.250*.

*NRS 608.018* provides, in relevant part:

1. Except as otherwise provided in this section, an employer shall pay one and one-half times an employee's regular wage rate whenever an employee works:

- (a) More than 40 hours in any scheduled week of work; or
- (b) More than 8 hours in [\*28] any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

2. The provisions of subsection 1 do not apply to:

- (a) Employees who are not covered by the minimum wage provisions of *NRS 608.250*;

(b) Employees who receive compensation for employment at a rate not less than one and one-half times the minimum rate prescribed pursuant to *NRS 608.250*;

....

(d) Salesmen earning commissions in a retail business if their regular rate is more than one and one-half times the minimum wage, and more than one-half their compensation comes from commissions;

....

(k) Drivers of taxicabs or limousines;

(l) Agricultural employees; . . . n3

n3 The provisions of *NRS 608.018* do not refer to, rely on, or parallel the provisions of *NRS 608.250* and would not be affected by the repeal of the *NRS 608.250* scheme for minimum wage. Furthermore, it should be noted that *NRS 608.180* -- *608.195* provide for civil and criminal enforcement and remedies for violations of *NRS 608.018*. This enforcement scheme is unrelated to the topic of minimum wage and would likewise remain unaffected by the proposed amendment.

[\*29]

As set forth above, *NRS 608.018(2)(a)* incorporates by reference the standard for minimum wage entitlement in *NRS 608.250*. By this, *NRS 608.018(2)(a)* excludes from entitlement to statutory overtime compensation those employees who are also not entitled to minimum wages. *NRS 608.250(2)* sets forth a list of employees who are not entitled to minimum wages, including casual babysitters, taxicab and limousine drivers, and certain domestic service employees, outside salespersons, employees engaged in agriculture and severely handicapped persons. *NRS 608.250(2)(a)* -- (f).

The exclusions at *NRS 608.250(2)(d)* (for employees "engaged in agricultural pursuit for an employer who did not use more than 500 man-days of agricultural labor") and in *NRS 608.250(2)(e)* (for "taxicab and limousine drivers") are also subsumed in other corresponding statutory exclusions from overtime compensation. In particular, *NRS 608.018(k)* [\*30] and (l) set forth exclusions which are at least as broad as those at *NRS 608.250(2)(d)* and (e) and which do not depend on or refer to *NRS 608.250*. Accordingly, any question as to the continuing validity of *NRS 608.250(2)* cannot affect the lack of entitlement to statutory overtime compensation for taxicab and limousine drivers or for agricultural employees.

On the whole, the exclusions from statutory overtime coverage, as incorporated from *NRS 608.250(2)*, are complimentary to the exclusions under the FLSA's overtime compensation provisions. n4 Hence, it is apparent that the Legislature intended to enact state overtime compensation law that was generally consistent with federal law on the same topic and to exclude from statutory overtime compensation the types of employees identified at *NRS 608.250(2)*. This intent should be respected regardless of changes in the law on the distinct subject matter of minimum wages.

n4 See, e.g., 29 U.S.C.A. § 213(a)(1) (1998) (addressing outside salespersons); 29 U.S.C.A. § 213(a)(6) (1998) (addressing employees employed in agriculture); 29 U.S.C.A. §§ 213(a)(7), 214(c) (1998) (addressing handicapped workers); 29 U.S.C.A. § 213(a)(15) (1998) (addressing casual babysitters and those engaged in domestic service).

[\*31]



Moreover, *NRS 608.018(2)(a)* does not depend on the aspects of *NRS 608.250* that offend the proposed amendment, *i.e.*, the provisions for minimum wage calculation and entitlement. Because the subject of the proposed amendment is the minimum wage and not entitlement to overtime compensation, *NRS 608.018(2)(a)* does not conflict with the organic provisions of the proposed amendment. Therefore, *NRS 608.018(2)(a)*, which incorporates the identification of types of employees found in *NRS 608.250(2)*, would survive the limited repeal of *NRS 608.250(2)* specific to its exclusion from minimum wage coverage for the same types of employees.

In contrast, the exclusions from statutory overtime entitlement set forth at *NRS 608.018(2)(b)* and (d) rely on the calculation of the minimum wage under *NRS 608.250*. Subsection (2)(b) expressly does so, excluding from overtime compensation "employees [\*32] who receive compensation for employment at a rate not less than one and one-half times the minimum rate prescribed pursuant to *NRS 608.250*." [Emphasis added.] Subsection 2(d) excludes "salesmen earning commissions in a retail business if their regular rate is more than one and one-half times the minimum wage, and more than one-half their compensation comes from commissions." [Emphasis added.]

The apparent intent behind *NRS 608.018(2)(b)* and (d) was to exclude from overtime compensation employees and certain salesmen who earned as a regular rate at least one and one-half times the minimum rate set by the Labor Commissioner -- a rate that is limited by the rate provided by federal law. *See NRS 608.250(1)*. In enacting *NRS 608.018(2)(b)* and (d), the Legislature could not have anticipated that overtime compensation would be required even though an employee earned more than one and one-half times the rate under federal law and *NRS 608.250*. Incorporation of the wage calculation at [\*33] *NRS 608.250* into *NRS 608.018* reflects the Legislature's determination as to the proper balance of state interests. Amending or supplanting *NRS 608.018(2)(b)* or (d) with the higher minimum wage rate of the proposed amendment would prove more costly for employers and would frustrate the apparent intent of the Legislature to tie this variable in the overtime calculation to the federal minimum wage.<sup>n5</sup> For this reason, and even more so because the proposed amendment is not concerned with overtime compensation, it would not effect a repeal or modification of these overtime compensation exclusions linked to *NRS 608.250*.

<sup>n5</sup> For example, the current minimum wage rate is \$ 5.15 per hour. This rate multiplied by one and one-half equals \$ 7.73 per hour. Thus under *NRS 608.018(2)(b)* and (d), statutory overtime compensation is required until an employee or salesman with sufficient commissions earns at least \$ 7.73 per hour. Under the proposed amendment, assuming no adequate insurance is provided, the minimum wage would be initially set at \$ 6.15 per hour. This rate multiplied by one and one-half equals \$ 9.23 per hour. If the calculation from the proposed amendment were incorporated into *NRS 608.018(2)(b)* and (d), then an employee would be entitled to statutory overtime compensation until he earned \$ 9.23 per hour.

[\*34]

The rule that all statutes in force and not inconsistent with the new constitutional provisions shall continue until amended or repealed by the Legislature seems particularly apt here. *See 16 AM. JUR. 2d Constitutional Law* § 67. Under this rule, the minimum wage calculation provisions of *NRS 608.250*, as incorporated into *NRS 608.018(2)(b)* and (d), should continue for the purpose of requiring the Labor Commissioner to establish a wage rate to be used in determining entitlement to statutory overtime compensation under *NRS 608.018(2)(b)* and (d).

#### CONCLUSION TO QUESTION FOUR

Notwithstanding the conclusion that the proposed amendment would effect an implied repeal of the provisions for calculation of the minimum wage and minimum wage entitlement found in *NRS 608.250*, the statutory exclusions from overtime compensation and the provisions of *NRS 608.250* relied upon in *NRS 608.018*, would [\*35] stand as enacted for purposes of the overtime compensation law.

Legal Topics:

For related research and practice materials, see the following legal topics:

Administrative LawAgency RulemakingRule Application & InterpretationGeneral

OverviewGovernmentsLegislationExpirations, Repeals & SuspensionsGovernmentsLegislationInitiative & Referendum



CLERK OF THE COURT

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4 BRENT A. CARSON, ESQ.  
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11 *Attorneys for Defendant, Boulder Cab, Inc.*

12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 \*\*\*\*\*

15 DAN HERRING, an individual;

16 Plaintiff,

17 vs.

18 BOULDER CAB, INC.

19 Defendants.

) Case No.: A-13-691551-C  
) Dept. No.: 16

) Hearing Date: August 18, 2015  
) Hearing Time: 9:00 a.m.

20 REPLY TO OPPOSITION FOR SUMMARY JUDGMENT

21 COMES NOW, Defendant, BOULDER CAB, INC., by and through its attorneys of record,  
22 ROBERT A. WINNER and BRENT A. CARSON, of the law firm of WINNER & CARSON, P.C., and  
23 hereby submits its Reply to Opposition for Summary Judgment.

24 //

25 //

26 //

27 //

28 //

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

DELUXE CAB filed its Motion for Summary Judgment and set forth specific facts that were not in dispute, summary judgment should be entered. Deluxe explained the history of the cab industry and compensation of the drivers. Deluxe demonstrated substantial inequities in applying the Thomas case retroactively. Deluxe further demonstrated substantial inequities in that wealthier cab companies with collective bargaining agreements (unions) are not subject to the minimum wage, while Deluxe is. The inequities are compounded if this court applies Thomas retroactively. Deluxe specifically identified its reliance on the statute, the history of cab driver compensation, and the notices Deluxe received from the Governor and the Labor Commissioner. Plaintiff's Opposition presents no admissible evidence, and has not demonstrated a material fact at issue. Plaintiff's Opposition makes false and misleading claims, attaches other cases/briefing/orders (which are incomplete) and attaches an old Attorney General opinion. Nothing offered by Plaintiff creates a material issue of fact. For clarity, we address the points in Plaintiff's Opposition in the Order made.

### II.

#### LEGAL ARGUMENT

##### A. Prospective Application of Thomas

The language used in the Thomas case suggests prospective application. The Supreme Court ruled the exceptions in the constitutional amendment "supersedes and supplants" NRS 608.250. Plaintiff claims the Nevada Supreme Court "resolved this issue" and Plaintiff also claims the Supreme Court "considered and rejected" prospective application. Both of these statements are false. Attached as Exhibit 1 is the Motion filed by the same Plaintiff lawyer in Thomas v. Yellow Cab to correct the opinion and change the language of "supersedes and supplants". Apparently recognizing the language

1 of Thomas is prospective, and not retroactive, Mr. Greenberg requested the change. The Supreme  
2 Court denied the motion to change the wording, the opinion "shall stand as issued". See Exhibit 2,  
3 the Order.

4 Later, the Supreme Court was considering the appeal in Gilmore v. Desert Cab. Again,  
5 Plaintiffs' attorney tried to raise that issue. The Gilmore decision declined to address the issue. (It  
6 was raised for the first time on appeal.)

7  
8 The citations of Plaintiff in this portion of this brief border on Rule 11 violations. To tell this  
9 Court the Supreme Court rejected prospective application is utterly false. A dizzying citation of  
10 exhibits and partial briefings/orders do not help Plaintiff. In the end, the following remain  
11 undisputed:

- 12 1) The Thomas decision used language of prospective application.
- 13 2) Nowhere in the Thomas decision does it suggest retroactive application.
- 14 3) The cases cited by Deluxe demonstrate the courts will not find retroactive application,  
15 if substantial inequities result and if there has been reasonable reliance by the parties.
- 16 4) Retroactive application has and will result in substantial inequities on Deluxe, among  
17 others.
- 18 5) The reasonable reliance by Deluxe on notices from the executive branch of government  
19 is undisputed.
- 20 6) Retroactive application further punishes Deluxe with severe financial penalties while  
21 richer and larger union companies are exempt. Public policy demands prospective  
22 application. Nothing in Plaintiff's brief negates any of these facts.

23  
24  
25 **B. The New Rule Announced in Thomas is Prospective**

26 Plaintiff cleverly argues the new rule was pronounced in the constitutional amendment,  
27 effective November 28, 2006. Plaintiff claims we "chose to ignore the constitutional amendment." In  
28

1 something of a zealous argument, Plaintiff claims the Nevada constitution "clearly and unambiguously  
2 mandated Defendant to pay its drivers the state minimum wage". (4:19) Plaintiff's logic is flawed.  
3 Let's look at the facts.

4 The constitutional amendment doesn't mention cab drivers. It doesn't mention NRS 608.250.  
5 The Governor and the Labor Commissioner issued notices to Deluxe, among others, telling Deluxe  
6 the law. Since the constitutional amendment was passed, through 2015, the Governor and the Labor  
7 Commissioner told Deluxe that cab drivers were exempt. The language (in part) Deluxe received and  
8 posted for its employees in the driver room and the shop:  
9

10 "The above provisions do not apply to:

11 (a) Employees who are not covered by the minimum wage provisions of the  
12 constitution...(j) drivers of taxicabs or limousines" (attached Exhibit 1 Deluxe Motion for  
Summary Judgment)

13 These notices citing the law to Deluxe were revised 11/13/2012, and 1/26/2015. Deluxe  
14 did not choose to ignore the constitution. It followed the notices issued by the Governor and the  
15 state. Interestingly, later in his brief, Plaintiff cites to language within the constitution to conclude  
16 lack of notice shall not excuse noncompliance.(6:3)  
17

18 It's not clear whether the Plaintiffs understand that portion of the language or its application to  
19 this issue. If we look at the entirety of the language cited by Plaintiffs, and not merely the emphasized  
20 portion, we see this language: the Governor or state agency shall publish a bulletin announcing the  
21 adjusted rates. It's made available to all employers who request to receive this notice (just like Deluxe  
22 did). But, if you don't ask for a notice, that doesn't excuse noncompliance. That makes sense.  
23 Plaintiff's application, however, is ludicrous. Let's look back at the language cited earlier, and issued  
24 in compliance with this portion as late as 2012 and 2015.  
25

26 The above provisions do not apply to:

27 a) employees who are not covered by the minimum wage provisions of the constitution...

28 (j) drivers of taxicabs...(Exhibit 1, original motion)

1 The notice Deluxe received throughout the years is the notice that was mandated by the  
2 constitutional amendment, in part cited by Plaintiff on page six (6). The law as cited by the Governor  
3 and Labor Commissioner states that cab drivers are still exempt. It also recognizes exceptions to  
4 minimum wage from the constitutional amendment.

5 Until the Thomas opinion was issued, cab drivers were still exempt. There had been no express  
6 repeal of the statute, and nearly every judge that had considered the issue and the Governor and Labor  
7 Commissioner thought the constitutional exceptions and the statutory exceptions could live in  
8 harmony. The new rule occurred when the Thomas decision was issued. Until that moment, cab  
9 drivers were exempt. Plaintiff's clever arguments to the contrary have no factual support and no legal  
10 authority cited. The Thomas decision must be applied prospectively.

11  
12 **C. Unfairness, the Attorney General Opinion**

13 Plaintiff notes an Attorney General opinion authored March 2, 2005. This was never provided  
14 to anyone at Deluxe. Plaintiff's claim that an AGO should have put Deluxe on notice is really thin.  
15 Plaintiff knows it. Plaintiff tries to bolster the importance or gravitas of an AGO by noting that Brian  
16 Sandoval "authored" it. Maybe, maybe not. Regardless, the reasoning in the AGO is weak, making  
17 two false assumptions, as noted by Judge Jones (Federal Judge). The AGO was never given to Deluxe.  
18 Deluxe didn't know its existence until after it was sued by Plaintiff.

19 Deluxe asks this court to consider Plaintiff's arguments on the AGO in the following context:  
20  
21 If the AGO issued by Brian Sandoval (Judge, AG, Governor) was so compelling and strong, why did  
22 the notices issued by Governor Sandoval in 2012 and 2015 still exempt cab drivers? Put another way,  
23 if the AGO notified Deluxe Sandoval's thoughts on the constitutional amendment, (which it didn't)  
24 why wasn't Brian Sandoval's powerful reasoning put into effect in the notices issued to employers  
25 like Deluxe? The notices mention the constitutional amendment exceptions. However, the Governor  
26 and the Labor Commissioner still say cab drivers are exempt, as late as 2015. Plaintiff's use of the  
27  
28

1 AGO to say we ignored the law is really a hollow point. If the AGO was that important, it would have  
2 had some effect on the notices issued by the State of Nevada. Plaintiff's arguments and suggestions  
3 in this section are meritless.

4 The next section in Plaintiff's Opposition states we were required to comply with or without  
5 guidance from the Labor Commissioner. Again, this is nonsensical. The section cited from the  
6 constitution was noted earlier in this briefing. Deluxe doesn't see the need to requote that section.  
7 However, that section of the constitutional amendment directs the Governor or state agency to publish  
8 the new rates, and make them available to employers, like Deluxe. If an employer chooses not to get  
9 these notices by the Governor, lack of notice doesn't excuse noncompliance. This makes sense.  
10 Plaintiff completely misrepresents this.

12 As part of complying with this constitutional mandate, the Governor has sent out notices with  
13 the Labor Commissioner. Those notices were received by Deluxe, among others. Cab drivers are still  
14 exempt.  
15

16 Later, Plaintiff claims we "falsely" asserted we got notice from the Governor and Labor  
17 Commissioner. The language within the notices is clear. We posted these notices in prominent places  
18 for our employees. Plaintiff's circular arguments might cause confusion, but we trust the court to look  
19 at the exhibits and read the plain language of the exhibits. If the court does that, Plaintiff's arguments  
20 in this section fall by the wayside.  
21

### 22 III.

### 23 CONCLUSION

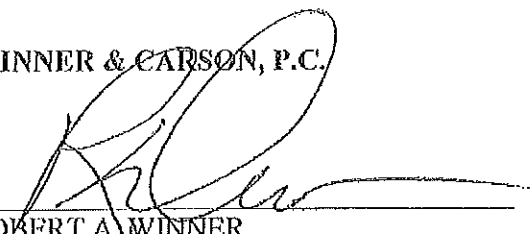
24 Plaintiff has offered no evidence to create a material fact issue. Summary Judgment should be  
25 granted. The Thomas court never suggested retroactivity, and its language suggests prospective  
26 application. All of the case law cited demonstrates retroactivity is disfavored when there are  
27 substantial inequities visited and there was reasonable reliance on the prior law. All of the evidence  
28



1 establishes this. It is offensive to punish Deluxe with back pay, penalties, attorney fees and punitive  
2 damages for following the law under NRS 608.250, and the notices Deluxe received from Governor  
3 Sandoval. To punish Deluxe, a small company, unnecessarily with retroactive application while  
4 exempting larger, richer unionized cab companies offends public policy. Plaintiff has offered nothing  
5 in opposition except misinformation and misquoting cases. Deluxe's Motion for Summary Judgment  
6 should be granted.

7 DATED this 13 day of August, 2015.

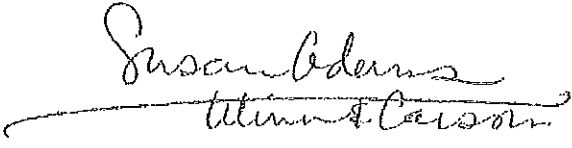
9 WINNER & CARSON, P.C.

10   
11  
12 ROBERT A. WINNER  
13 Nevada Bar No. 5167  
14 510 South Eighth Street  
15 Las Vegas, Nevada 89101  
16 Attorney for Defendant, Boulder Cab, Inc.

17 **CERTIFICATE OF SERVICE**

18 I HEREBY CERTIFY that on the 14<sup>th</sup> day of August, 2015, I served a true and correct copy of  
19 the foregoing **REPLY TO OPPOSITION TO MOTION TO DISMISS**, by electronic service,  
20 addressed as follows:

21  
22 Dana Sniegocki  
23 Leon Greenberg  
24 2965 S. Jones Blvd., Ste. E-4  
25 Las Vegas, Nevada 89146  
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titinn & Carson

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2  
3 IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
Oct 14 2014 03:39 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

4  
5 CHRISTOPHER THOMAS and  
6 CHRISTOPHER CRAIG,  
7 Individually and on behalf of others  
similarly situated,

Sup. Ct. No. 61681

Dist. Ct No.: A-12-661726-C

Dept. No. XXVIII

8 Appellants,

9 vs.

10 NEVADA YELLOW CAB  
11 CORPORATION, NEVADA  
12 CHECKER CAB CORPORATION,  
13 NEVADA STAR CAB  
CORPORATION,

14 Respondents,

15  
16  
17  
18 APPELLANTS' MOTION TO CORRECT  
19 OPINION OF JUNE 26, 2014 AND STAY  
REMITTITUR  
20  
21

22 Leon Greenberg, Esq. (Bar # 8094)  
23 A Professional Corporation  
24 2965 S. Jones Blvd., Suite E-3  
Las Vegas, Nevada 89146  
(702) 383-6085  
25 Attorney for Appellants  
26  
27  
28

1 Appellants, Christopher Thomas and Christopher Craig, hereby  
2 file this motion seeking to correct this Court's Opinion of June 26, 2014, by  
3 removing any present tense language that can be interpreted as directing such  
4 Opinion is only to be applied prospectively.

5  
6 NATURE OF RELIEF SOUGHT

7  
8 The holding of the Court's Opinion of June 26, 2014 is not in  
9 dispute. What is sought by this motion is a correction to the present tense  
10 language of two sentences, and three words, of the Opinion which, if  
11 uncorrected, will be the subject of further litigation, and a further appeal to this  
12 Court, over whether such Opinion's application is only prospective. These two  
13 sentences, with the requested corrected language in brackets and removed  
14 words struck through, are set forth below:

15  
16 We hold that the district court erred because the text of the  
17 Minimum Wage Amendment, by clearly setting out some  
18 exceptions to the minimum wage law and not others, ~~supplants~~  
19 [supplanted] the exceptions listed in NRS 608.250(2). Opinion,  
20 page 2; 327 P.3d at 520.

21  
22 The text of the Minimum Wage Amendment, by enumerating  
23 specific exceptions that do not include taxicab drivers, ~~supersedes~~  
24 [superseded] and ~~supplants~~ [supplanted] the taxicab driver  
25 exception set out in NRS 608.250(2). Opinion, page 9; 327 P.3d  
26 at 522.

1           **WHY THE RELIEF REQUESTED SHOULD BE GRANTED**

2           The relief requested is sought to conserve judicial resources and  
3 promptly secure for the appellants, and many thousands of other employees in  
4 the Nevada taxicab industry, the relief afforded to them by the Court's Opinion  
5 of June 26, 2014. Appellants' counsel is aware of six other pending litigations  
6 involving taxi driver plaintiffs seeking minimum hourly wages, including one  
7 currently on appeal to this Court, *Gilmore v. Desert Cab, Inc.* No. 62905. *See*,  
8 Ex. "A" ¶ 1. This case, the *Gilmore* appeal, and all of those other cases,  
9 involve the identical issue resolved by this appeal, the entitlement of taxi  
10 drivers to the minimum hourly wage specified by Nevada's Constitution.

11           This litigation has been most vigorously contested, as evidenced by  
12 respondents' recently denied, and wholly specious, Petition for Rehearing. *See*,  
13 Order of September 24, 2014. Despite the speciousness of any claim that the  
14 Court's Opinion of June 26, 2014 only has prospective application, it seems  
15 virtually certain that respondents in this case, and one or more defendants in the  
16 other taxi driver minimum wage cases, will insist on litigating that issue. They  
17 will do so based upon the foregoing enumerated language. If that language is  
18 not modified as requested they will insist it establishes that, under the Court's  
19 June 26, 2014 Opinion, the Minimum Wage Amendment has not "superceded"  
20 and "supplanted" the exceptions set out in NRS 608.250(2) as of the  
21 Amendment's effective date but only "supercedes" and "supplants" them as of  
22 the date of such Opinion. *See*, Ex. "A" ¶ 2.

23           **THE COURT SHOULD STAY REMITTITUR**  
24           **TO CORRECT ITS OPINION**

25           Pursuant to NRAP Rule 41(a)(1) this Court is to issue remittitur of this  
26 case on October 20, 2014, unless it enlarges the time for it to do so by  
27 appropriate Order. It is submitted that the Court should suitably enlarge the  
28 time for its remittitur to issue so it can consider and rule upon this motion

1 before it relinquishes jurisdiction over this appeal.

2

3 Dated this 14th day of October, 2014.

4

5

6

/s/ Leon Greenberg  
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Attorney for Appellant

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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; AND NEVADA  
STAR CAB CORPORATION,  
Respondents.

No. 61681

FILED

OCT 27 2014


TRACIE K. LINDENMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

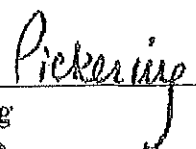
ORDER


This court issued an opinion in this matter on June 26, 2014. Appellants have filed a motion to correct the opinion by changing three words from present tense to past tense, and also request that this court stay issuance of the remittitur, which was due to issue October 20, 2014. Respondents have filed an opposition to the motion, and appellants have filed a reply. No good cause appearing, we deny the motion to the extent it requests changes to the wording of the opinion; the opinion shall stand as issued. We grant the motion to the extent that the remittitur was not


issued while this court considered the motion. As we have now ruled on the motion, we direct the clerk to issue the remittitur forthwith.

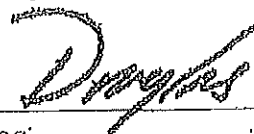
It is so ORDERED.

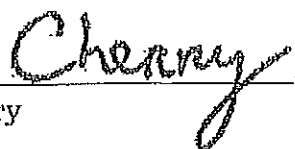
  
Gibbons

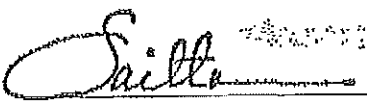
  
Pickering

  
Hardesty

  
Parraguirre

  
Douglas

  
Cherry

  
Saitta

cc: Hon. Ronald J. Israel, District Judge  
Leon Greenberg Professional Corporation  
Marc C. Gordon  
Tamer B. Botros  
Eighth District Court Clerk

  
CLERK OF THE COURT

**ORDR**  
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Attorneys for Plaintiffs

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

DAN HERRING, Individually and  
on behalf of others similarly situated,

Plaintiff,

vs.

BOULDER CAB, INC.,

Defendant.

Case No.: A-13-691551-C

Dept.: XVI

**ORDER**

**Hearing Date: August 18, 2015**  
**Hearing Time: 9:00 a.m.**

On August 18, 2015, a hearing took place before the Honorable Timothy C. Williams on Defendant's Motion to Dismiss/Motion for Summary Judgment, Plaintiff appearing through his counsel, Dana Sniegocki, and Defendant appearing through its counsel, Robert Winner. Having reviewed the parties' respective briefs and having heard the oral arguments of counsel,

**THE COURT FINDS** that the arguments set forth and authorities relied upon by Defendant are not persuasive. Defendant seeks to have the Court dismiss Plaintiff's claims for unpaid minimum wages or alternatively grant summary judgment to Defendant based upon its argument that Plaintiff did not become entitled to minimum wage (as a taxicab driver) until the Nevada Supreme Court



1 rendered its decision on June 26, 2014 in *Thomas v. Nevada Yellow Cab Corp. et*  
2 *al.*, 327 P.3d 518 (Nev.2014). Much of Defendant's argument relied upon authority  
3 concerning judicial abrogation of common law. The Court does not find that the  
4 Nevada Supreme Court's decision in *Thomas* was the result of a judicial abrogation  
5 of any common law doctrine. Instead, *Thomas* was a decision involving the  
6 application of a new amendment to Nevada's Constitution. Such constitutional  
7 amendment, the Minimum Wage Amendment found in Article 15, Section 16 of the  
8 Nevada Constitution, was effectuated into law on November 28, 2006. As a result,  
9 the requirements and mandates of the Minimum Wage Amendment to the Nevada  
10 Constitution became the law of the land on November 28, 2006 and not when the  
11 Nevada Supreme Court decided the *Thomas* appeal. Accordingly,

12  
13 **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss/Motion  
14 for Summary Judgment is DENIED in its entirety.

15 **IT IS FURTHER ORDERED** that Defendant will have 20 days from  
16 service of the notice of entry of this Order to file an Answer to Plaintiff's First  
17 Amended Complaint.

18  
19 IT IS SO ORDERED.

20  
21 DATED this 1st day of September, 2015.

22  
23  
24   
HON. TIMOTHY C. WILLIAMS

25 ///

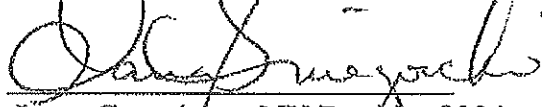
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26 ///

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1 Respectfully Submitted:

2 Leon Greenberg Professional Corporation

3 

4 Leon Greenberg, NV Bar No. 8094

5 Dana Sniegocki, NV Bar No. 11715

6 Leon Greenberg Professional Corporation

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10 Attorneys for Plaintiffs

11 Form and Content Approved By:

12 NOT APPROVED

13 Robert A. Winner, Esq.

14 **WINNER & CARSON, P.C.**

15 510 South Eighth Street

16 Las Vegas, Nevada 89101

702.471.1111 (telephone)

702.471.0110 (facsimile)

## FULL TEXT OF THE MEASURE

### RAISE THE MINIMUM WAGE FOR WORKING NEVADANS

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

#### THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

##### Section 1. Title.

This Measure shall be know and may be cited as “**The Raise the Minimum Wage for Working Nevadans Act.**”

##### Section 2. Findings and Purpose

The people of the State of Nevada hereby make the following findings and declare their purpose in enacting this Act is as follows:

1. No full-time worker should live in poverty in our state.
2. Raising the minimum wage is the best way to fight poverty. By raising the minimum wage from \$5.15 an hour to \$6.15 an hour, a full-time worker will earn an additional \$2,000 in wages. That’s enough to make a big difference in the lives of low-income workers to move many families out of poverty.
3. For low –wage workers, a disproportionate amount of their income goes toward cost of living expenses. Living expenses such as housing, healthcare, and food have far outpaced wage levels for Nevada’s working families.
4. In our state, 6 out of 10 minimum wage earners are women. Moreover 25 percent of all minimum wage earners are single mothers, many of whom work full-time.
5. At \$5.15 an hour, minimum wage workers in Nevada make less money than they would on welfare. When people choose work over welfare, they become productive members of society and the burden on Nevada taxpayers is reduced.
6. Raising the minimum wage from \$5.15 an hour to \$6.15 an hour affirms Nevadan’s beliefs that we value work, especially the difficult jobs performed by hotel maids, childcare workers, and nursing home employees. We need to make sure the workers who are the backbone of our economy receive fair paychecks that allow them and their families to live above the poverty line.

##### Section 3.

Article 15 of the Constitution of the State of Nevada is hereby amended by adding thereto a new section to read as follows:

##### *Sec. 16. Payment of minimum compensation to employees.*

- A. Each employer shall pay a wage to each employee of not less than the hourly rates set forth in this section. The rate shall be five dollars and fifteen cents (\$5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents (\$6.15) per hour if the employer does not provide such*



benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer. These rates of wages shall be adjusted by the amount of increases in the federal minimum wage over \$5.15 per hour, or, if greater, by the cumulative increase in the cost of living. The cost of living increase shall be measured by the percentage increase as of December 31 in any year over the level as of December 31, 2004 of the Consumer Price Index (All Urban Consumers, U.S. City Average) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency. No CPI adjustment for any one-year period may be greater than 3%. The Governor or the State agency designated by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1. Such bulletin will be made available to all employers and to any other person who has filed with the Governor or the designated agency a request to receive such notice but lack of notice shall not excuse noncompliance with this section. An employer shall provide written notification of the rate adjustments to each of its employees and make the necessary payroll adjustments by July 1 following the publication of the bulletin. Tips or gratuities received by employees shall not be credited as being any part of or offset against the wage rates required by this section.

- B. The provisions of this section may not be waived by agreement between an individual employee and an employer. All of the provisions of this section, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this section. An employer shall not discharge, reduce the compensation of or otherwise discriminate against any employee for using any civil remedies to enforce this section or otherwise asserting his or her rights under this section. An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs.
- C. As used in this section, "employee" means any person who is employed by an employer as defined herein but does not include an employee who is under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days. "Employer" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts of employment.

*D. If any provision of this section is declared illegal, invalid or inoperative, in whole or in part, by the final decision of any court of competent jurisdiction, the remaining provisions and all portions not declared illegal, invalid or inoperative shall remain in full force or effect, and no such determination shall invalidate the remaining sections or portions of the sections of this section.*



CLERK OF THE COURT

1 LEON GREENBERG, ESQ., SBN 8094  
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10 Attorneys for Plaintiffs

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DISTRICT COURT  
CLARK COUNTY, NEVADA

DAN HERRING, Individually and on  
behalf of others similarly situated,

Plaintiff,

vs.

BOULDER CAB, INC.,

Defendant.

Case No.: A-13-691551-C

Dept.: XVI

PLAINTIFF'S RESPONSE IN  
OPPOSITION TO  
DEFENDANT'S MOTION TO  
DISMISS/MOTION FOR  
SUMMARY JUDGMENT

Plaintiff, through his attorneys, Leon Greenberg Professional Corporation,  
hereby submits this response in opposition to defendant's motion to dismiss/motion for  
summary judgment. This response is submitted based upon the memorandum of points  
and authorities below and the other papers and pleadings in this action.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**ARGUMENT**

**I. Defendant's "Prospective Only" Application Argument Has Been  
Considered and Rejected by the Nevada Supreme Court**

Defendant's entire motion, while not explicitly saying so, seems to suggest it  
would be unfair to find liability against it for violating the Nevada Constitution. This  
"unfairness" allegedly results from defendant's reliance upon notices it allegedly  
received from the Labor Commissioner and an exemption to NRS 608.250.

1 Unfortunately for defendant, the Nevada Supreme Court has already resolved this  
2 issue.

3 Amendments to Nevada's Constitution become "effective upon the canvass of  
4 the votes by the supreme court." *Tovinen v. Rollins*, 560 P.2d 915, 916-917 (Nev. Sup.  
5 Ct. 1977). Article 15, Section 16, of the Nevada Constitution, and all of its terms,  
6 became the law of Nevada as of its effective date of November 28, 2006, not on the  
7 date of the Supreme Court's Opinion on June 26, 2014 in *Thomas v. Nevada Yellow*  
8 *Cab Corp.*, 327 P.3d 518 (NV. Sup. Ct. 2014). Plaintiff is not making any claims  
9 against defendant involving conduct occurring prior to that effective date. The only  
10 "prospective application" of Article 15, Section 16, of the Nevada Constitution is its  
11 application *after* November 28, 2006. "As a general rule, a constitutional amendment  
12 is to be given *only prospective application from its effective date* unless the intent to  
13 make it retrospective clearly appears from its terms." *Tovinen*, 560 P.2d at 917  
(emphasis added).

14 Upon remand in *Yellow Cab*, it was argued that the Nevada Supreme Court's  
15 *Yellow Cab* Opinion only governed conduct taking place after its publication on June  
16 26, 2014. Judge Israel rejected that argument and declined to stay *Yellow Cab*  
17 pending the disposition by the Nevada Supreme Court of the taxi driver minimum  
18 wage case of *Gilmore v. Desert Cab*. Ex. "A." The defendants in *Yellow Cab*  
19 subsequently filed a petition for a writ of mandamus seeking to overturn that decision.  
20 Ex. "B." That petition was denied as moot as a result of the disposition in *Gilmore v.*  
21 *Desert Cab, Inc.*, Appeal No. 62905, NV. Sup. Ct. Decision of April 16, 2015. Ex.  
22 "C." The Nevada Supreme Court reversed and remanded *Gilmore* based upon the  
23 decision in *Yellow Cab* and in doing so declined to embrace the argument raised in the  
24 *Gilmore* appeal that *Yellow Cab* had no application to conduct taking place prior to  
25 June 26, 2014, the date the *Yellow Cab* decision was issued. Ex. "D", *Gilmore* appeal  
26 disposition order, Ex. "E" Respondent's Brief in *Gilmore* appeal, pages 17-27, arguing  
27 *Yellow Cab* was not applicable to conduct taking place prior to June 26, 2014.  
28

1 The Ninth Circuit Court of Appeals has also expressly rejected this argument  
2 and found *Yellow Cab* applies to all taxi and limousine drivers employed in Nevada  
3 after the Nevada Minimum Wage Amendment's enactment in 2006. *See, Greene v.*  
4 *Executive Coach & Carriage*, 591 Fed Appx. 550 (9<sup>th</sup> Cir. 2015):

5 The district court erred in dismissing Greene's claim under the Nevada  
6 Minimum Wage Amendment, embodied in Article 15, § 16 of the Nevada  
7 Constitution. *See Thomas v. Nevada Yellow Cab Corp.*, 327 P.3d 518,  
8 522 (Nev. 2014) (holding that the Nevada Minimum Wage Amendment,  
9 which contains no taxicab and limousine exception, "supersedes and  
10 supplants the taxicab driver exception set out in [Nevada Revised Statutes  
11 §] 608.250(2)"). Because the repeal of § 608.250(2) occurred in 2006  
12 when the amendment was ratified, we reject Executive Coach and  
13 Carriage's ("Executive") retroactivity argument. Greene does not allege  
14 that he is owed wages for hours worked prior to 2006. We therefore  
15 reverse the district court's dismissal of the minimum wage claim.

16 Adopting defendants' arguments, and failing to apply *Yellow Cab's* ruling to  
17 this case, would contravene the fundamental principles of our system of justice and  
18 close to a millennium of common law. Courts are required to make substantive, and  
19 not merely future conduct, rulings about the civil legal rights of the parties. "The  
20 general rule that judicial decisions are given retroactive effect is basic in our legal  
21 tradition." *See, Newman v. Emerson Radio Corp.*, 48 Cal. 3d 973, 978 (Cal. Sup. Ct.  
22 1989) citing *Linkletter v. Walker*, 381 U.S. 618, 622 (1965) ("At common law there  
23 was no authority for the proposition that judicial decisions made law only for the  
24 future", citing 1 Blackstone, Commentaries 69 (15th ed. 1809)). *Yellow Cab*, a final  
25 decision from the Nevada Supreme Court on an issue of Nevada law, **is the law** and is  
26 binding upon this Court in respect to all legal claims that have yet to reach final  
27 judgment.

28 **II. The "New Rule" at Issue in this Case is the Amendment to  
the Nevada Constitution, Not the *Yellow Cab* Decision**

Defendant attempts to mislead the Court by citing to various court decisions in  
which courts were considering the impact of new law created by *judicial decisions* on  
conduct occurring *prior* to the rendering of such *decisions*. No such "newly created  
judicial law" is at issue in this case. Plaintiff makes claims under an amendment to the  
Nevada Constitution which became affective on **November 28, 2006**. Such



1 amendment was in place, and in force, nearly *eight years* prior to the *Yellow Cab*  
2 decision. Plaintiff's claims only concern the defendant's conduct occurring *after*  
3 November 26, 2006.

4 Defendant speciously claims that under *Ziglinski v. Farmers Insurance*, 93 Nev.  
5 23 (Nev. Sup. Ct. 1977), the Court must only apply the decision in *Yellow Cab*  
6 prospectively, *i.e.*, to conduct occurring *after* June 26, 2014. *Ziglinski* concerned  
7 whether a *judicial decision* rendered in 1974, which abrogated the common law  
8 doctrine of interspousal immunity, could apply to an event (motor vehicle accident)  
9 occurring in 1973, a year prior to the judicial pronouncement. The respondent  
10 insurance company in *Ziglinski* argued it justifiably relied upon such common law  
11 doctrine until it had been *judicially* abrogated in 1974. The issue in *Ziglinski*,  
12 involving a *judicial pronouncement* that abrogated a common law doctrine is  
13 irrelevant and inapplicable to this case. In this case, no such justifiable reliance on a  
14 *judicial pronouncement* can or does exist. The Nevada Constitution, this state's  
15 supreme law, was amended effective in 2006 and the defendant simply chose to ignore  
16 it. It continued to so ignore the mandates of the Constitution until the Nevada  
17 Supreme Court rendered a decision in *Yellow Cab*. Defendant has no basis to argue it  
18 justifiably relied upon any other statute or any other judicial decision when the  
19 supreme law, the Nevada Constitution, clearly and unambiguously mandated  
20 defendant to pay its drivers the state minimum wage for nearly *eight years*. The  
21 defendant was legally required, just like virtually every other Nevada business, to  
22 comply with the minimum wage requirements of the Nevada Constitution. Its duty to  
23 comply with the Constitution existed since 2006 with, or without, the *Yellow Cab*  
24 decision. Defendant cannot now claim "unfairness" as a basis to escape liability in  
25 this case.

26 Each of the other cases defendant cites also concern "new judicially made law"  
27 created via a judicial decision and *not* a constitutional amendment. Defendant  
28

1 confuses what the “new rule” at issue here actually is; it is the 2006 Minimum Wage  
2 Amendment to the Nevada Constitution, not the *Yellow Cab* decision.

3 Diligent research by plaintiff’s counsel has failed to find a reported case from  
4 any jurisdiction where a “future conduct only” ruling was issued in respect to conduct  
5 taking place *after* the effective date of a newly enacted constitutional provision or  
6 statute. Nor do defendants cite any such precedent.

7 **III. Defendant’s “Unfairness” Argument is Without Merit**

8 **A. Defendant Has Been on Notice of Its Obligation to Pay Its Taxicab**  
9 **Drivers the Minimum Wage Since at least 2005 Which is Prior to**  
10 **The Effective Date of the Constitutional Minimum Wage Amendment**

11 On March 2, 2005, then Nevada Attorney General, later United States District  
12 Court Judge, and current Nevada Governor, Brian Sandovol issued the Ex. “F”  
13 Opinion. The analysis utilized in that opinion looked to the precise language of the  
14 Nevada Constitution, specifically its imposition of a minimum wage as specified in  
15 that “section” of the Nevada Constitution and its failure to make any mention of NRS  
16 608.250. Such Opinion, coming from the highest law enforcement officer in the state,  
17 clearly and unmistakably put defendant, and every other employer in the State of  
18 Nevada, on notice of the effect of the proposed Minimum Wage Amendment. *See*, Ex.  
19 “F.” Defendant, upon issuance of this Attorney General Opinion, could have filed its  
20 own lawsuit seeking declaratory relief from the Court. It chose, instead, to ignore the  
21 Minimum Wage Amendment and continue to ignore it until after this instant litigation  
22 was commenced.

23 **B. Defendant Is Charged With Complying With the Minimum Wage**  
24 **Provisions of the Constitution Without or Without Guidance from**  
25 **The Nevada Labor Commissioner**

26 Defendant’s entire “summary judgment” brief is void of one crucial element: the  
27 text of Article 15, Section 16 of the Nevada Constitution. This is because defendant  
28 knows the clear language of such section negates its “unfairness” and “reliance”  
arguments in just two sentences. Under Article 15, Section 16,

1 "The Governor or the State agency designated by the Governor shall publish a  
2 bulletin by April 1 of each year announcing the adjusted rates, which shall take  
3 effect the following July 1. Such bulletin will be made available to all employers  
4 and to any other person who has filed with the Governor or the designated  
5 agency a request to receive such notice but lack of notice shall not excuse  
6 noncompliance with this section." (Emphasis added)

7 Defendant argues that it relied upon "the notices from the Labor Commissioner and  
8 the Governor that cab drivers are exempt from the minimum wage law." Even if, as  
9 defendant asserts, the Labor Commissioner provided it with legally erroneous notices,  
10 the Nevada Constitution is clear that "lack of notice shall not excuse noncompliance  
11 with this section." Defendant can make no "unfairness" or "inequity" argument where  
12 the Constitution clearly and unequivocally mandates compliance and imposes strict  
13 liability on those who feign ignorance of the law.

14 Moreover, defendant falsely asserts in its brief to this court that "The Labor  
15 Commission [*sic*] and the Governor sent notices to Deluxe Cab since Deluxe was  
16 certificated. To this date, the notices from the Governor and the Labor Commission  
17 [*sic*] state cab drivers are exempt from the minimum wage." See, "Undisputed Facts"  
18 Section II (3) of defendant's moving papers. A review of the 2012 and 2015 "Rules to  
19 Be Observed by Employers" allegedly issued to defendant by the Nevada Labor  
20 Commissioner (attached as Ex. "1" to defendant's motion) indicates that no such  
21 "exemption from the minimum wage" statement is made at all. Section 4 on both  
22 notices states "Effective July 1, 2010 each employer shall pay a wage to each  
23 employee of not less than \$7.25 per hour worked in the employer provides health  
24 benefits, or \$8.25 per hour if the employer does not provide health benefits."  
25 (Emphasis added). Nowhere do such documents state "cab drivers are exempt from  
26 the minimum wage." Defendant also fails to cite precisely to the portion of such  
27 documents it believes exempts taxicab drivers from the minimum wage because it  
28 cannot. Therefore, defendant's unfairness argument fails on this point as well.

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CONCLUSION

For all the foregoing reasons, defendant's motion should be denied in its entirety.

Dated: Clark County, Nevada  
August 6, 2015

Leon Greenberg Professional Corporation

By: /s/ Dana Sniegocki  
Dana Sniegocki, Esq.  
Nevada Bar No.: 11715  
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Attorney for Plaintiff

1 CSERV  
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11 Attorneys for Plaintiffs

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DISTRICT COURT  
CLARK COUNTY, NEVADA

DAN HERRING, Individually and on  
behalf of others similarly situated,

Plaintiff,

vs.

BOULDER CAB, INC.,

Defendant.

Case No.: A-13-691551-C

Dept.: XVI

CERTIFICATE OF SERVICE

The undersigned certifies that on August 6, 2015, she served the within:

PLAINTIFF'S RESPONSE IN OPPOSITION TO

DEFENDANT'S MOTION TO DISMISS/MOTION FOR

SUMMARY JUDGMENT

by court electronic service to:

Robert A. Winner  
WINNER & CARSON, P.C.  
510 South Eighth Street  
Las Vegas, NV 89101

/s/ Dana Sniegocki  
Dana Sniegocki

# EXHIBIT "A"

1 **ORDR**

2 LEON GREENBERG, ESQ., SBN 8094  
3 DANA SNIEGOCKI, ESQ., SBN 11715  
4 Leon Greenberg Professional Corporation  
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9 [leongreenberg@overtimelaw.com](mailto:leongreenberg@overtimelaw.com)  
10 [dana@overtimelaw.com](mailto:dana@overtimelaw.com)  
11 Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

11 CHRISTOPHER THOMAS, and  
12 CHRISTOPHER CRAIG, Individually and on  
13 behalf of others similarly situated,

14 Plaintiffs,

15 vs.

16 NEVADA YELLOW CAB CORPORATION,  
17 NEVADA CHECKER CAB CORPORATION,  
18 and NEVADA STAR CAB CORPORATION,

19 Defendants.

CASE NO. A-12-661726

DEPT. NO. XXVIII

Hearing Date: February 10, 2015  
Hearing Time: 9:00 a.m.

20 **ORDER DENYING DEFENDANTS' MOTION TO DISMISS**

21 Defendants filed their Motion to Dismiss Pursuant to NRCP 12(b)(5) on January 6, 2015.  
22 Plaintiffs' Response in Opposition to Defendants' Motion to Dismiss was filed on January 23, 2015. On  
23 January 27, 2015, Plaintiffs filed a "Supplement to Plaintiffs' Response In Opposition To Defendants'  
24 Motion To Dismiss Consisting of Newly Issued Authority." Defendants thereafter filed their Reply to  
25 Plaintiffs' Response in Opposition to Defendants' Motion to Dismiss on February 6, 2015. Such Reply  
26 also sought a stay of all proceedings in this case until the Nevada Supreme Court rendered a decision in  
27  
28

*Ramb*  
2/23/15 (28)

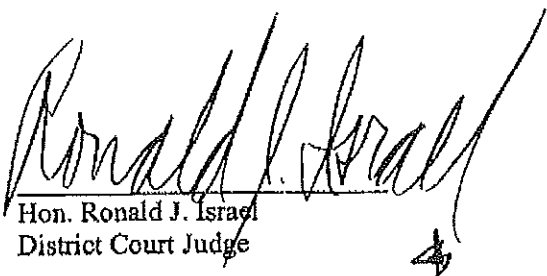
1 the case of *Gilmore v. Desert Cab, Inc.*, Supreme Court No. 62905, currently pending before the Nevada  
2 Supreme Court. This matter, having come before the Court for hearing on February 10, 2015, with  
3 appearances by Tamer B. Botros, Esq., on behalf of all Defendants, and Leon Greenberg, Esq., on behalf  
4 of all Plaintiffs, and following the arguments of such counsel, and after due consideration of the parties'  
5 respective briefs, and all pleadings and papers on file herein, and good cause appearing, therefore

7 **IT IS HEREBY ORDERED:**

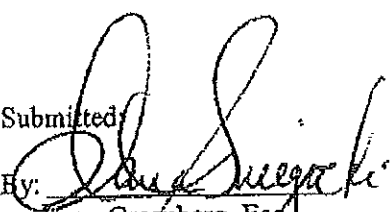
8 Defendants' Motion to Dismiss Pursuant to NRCP 12(b)(5) is **DENIED** in its entirety. The legal  
9 argument put forth in Defendants' Motion to Dismiss that the Nevada Supreme Court's Opinion in the  
10 appeal in this case was not intended to have retroactive application to conduct pre-dating that Opinion is  
11 rejected. This Court does not view the actions of the Nevada Supreme Court in this case as supporting  
12 such argument. Defendants to file an Answer to the First Amended Complaint within 10 days of notice  
13 of entry of this order being electronically filed. Defendants' request to stay all proceedings in this case  
14 until the Nevada Supreme Court issues a decision in *Gilmore v. Desert Cab, Inc.*, Supreme Court No.  
15 62905 is also **DENIED**.

18 **IT IS SO ORDERED.**

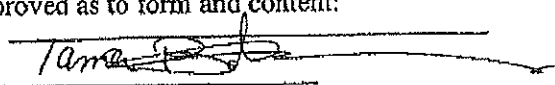
19 Dated this 24 <sup>March</sup> day of February, 2015.

20   
21 Hon. Ronald J. Israel  
22 District Court Judge

23 Submitted

24 By:   
25 Leon Greenberg, Esq.  
26 Dana Sniegocki, Esq.  
27 LEON GREENBERG PROF. CORP.  
28 2965 s. Jones Blvd., Ste. E-4  
Las Vegas, NV 89146  
Attorney for Plaintiffs

Approved as to form and content:

By:   
Marc C. Gordon, Esq.  
Tamer B. Botros, Esq.  
YELLOW CHECKER STAR  
TRANSPORTATION CO. LEGAL DEPT.  
5225 W. Post Road  
Las Vegas, Nevada 89118  
Attorneys for Defendants



# EXHIBIT "B"

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. )

Electronically Filed  
Mar 30 2015 10:34 a.m.  
Tracie K. Lindeman  
Sup. Ct. No. Clerk of Supreme Court  
Case No.: A-12-661726-C

Dept. No.: XXVIII

**PETITION FOR WRIT OF MANDAMUS**

MARC C. GORDON, ESQ.  
Nevada Bar No. 001866  
TAMER B. BOTROS, ESQ.  
Nevada Bar No. 012183  
**YELLOW CHECKER STAR**  
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Attorneys for Petitioners  
NEVADA YELLOW CAB CORPORATION  
NEVADA CHECKER CAB CORPORATION  
NEVADA STAR CAB CORPORATION

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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 Petitioners are respectfully requesting that this Honorable Court issue an Order  
15 directing District Court Judge Ronald J. Israel to **stay the entirety of the Thomas**  
16 **case**, until this Honorable Court renders a decision on whether the Thomas  
17 decision applies retroactively or prospectively.  
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1 V.

2 CONCLUSION

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

6  
7 DATED this 27th day of March, 2015.

8 YELLOW CHECKER STAR  
9 TRANSPORTATION CO. LEGAL DEPT.

10  
11 /s/ Tamer B. Botros  
12 MARC C. GORDON, ESQ.  
13 GENERAL COUNSEL  
14 Nevada Bar No. 001866  
15 TAMER B. BOTROS, ESQ.  
16 ASSOCIATE COUNSEL  
17 Nevada Bar No. 012183  
18 5225 W. Post Road  
19 Las Vegas, Nevada 89118  
20 Attorneys for Petitioners  
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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.

///

///

///

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  
7 TRANSPORTATION CO. LEGAL DEPT.

8 /s/ Tamer B. Botros  
9 MARC C. GORDON, ESQ.  
10 GENERAL COUNSEL  
11 Nevada Bar No. 001866  
12 TAMER B. BOTROS, ESQ.  
13 ASSOCIATE COUNSEL  
14 Nevada Bar No. 012183  
15 5225 W. Post Road  
16 Las Vegas, Nevada 89118  
17 Attorneys for Petitioners  
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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:

Leon Greenberg, Esq.  
Dana Sniegocki, Esq.  
Leon Greenberg Professional Corporation  
2965 South Jones Blvd, Suite E4  
Las Vegas, Nevada 89146  
[leongreenberg@overtimelaw.com](mailto:leongreenberg@overtimelaw.com)  
[dana@overtimelaw.com](mailto:dana@overtimelaw.com)  
Attorneys for Plaintiffs  
**CHRISTOPHER THOMAS**  
**CHRISTOPHER CRAIG**

The Honorable Ronald J. Israel  
Regional Justice Center  
Department 28  
200 Lewis Avenue  
Las Vegas, Nevada 89155  
(Via-Hand Delivery)

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

# EXHIBIT "C"

IN THE SUPREME COURT OF THE STATE 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.

No. 67664

FILED

APR 16 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

Having considered this original petition for a writ of mandamus, which seeks an order directing the district court to stay the proceedings below pending our decision in *Gilmore v. Desert Cab, Inc.*, Docket No. 62905, we deny the petition. *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). A decision was recently entered in *Gilmore*. Thus, as it is moot, we

ORDER the petition DENIED.

*[Signature]*, J.  
Saitta

*[Signature]*, J.  
Gibbons

*[Signature]*, J.  
Pickering

cc: Hon. Ronald J. Israel, District Judge  
Marc C. Gordon  
Tamer B. Botros  
Leon Greenberg Professional Corporation  
Eighth District Court Clerk



# EXHIBIT "D"

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARBARA GILMORE, INDIVIDUALLY  
AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,  
Appellant,  
vs.  
DESERT CAB, INC.,  
Respondent.

No. 62905

FILED

APR 16 2015

THOMAS K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order dismissing a class action for minimum wages. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

The Minimum Wage Amendment to the Nevada Constitution, Nev. Const. art. 15, § 16, implicitly repealed NRS 608.250(2)(e)'s exception for taxicab drivers. *Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. \_\_\_, 327 P.3d 518 (2014). Therefore, appellant taxicab driver stated a viable claim for minimum wages, and we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for further proceedings.<sup>1</sup>

*[Signature]*, J.

Saitta

*[Signature]*, J.  
Gibbons

*[Signature]*, J.  
Pickering

<sup>1</sup>We have considered the parties' arguments on appeal, and we decline to further address them.

15-11484

cc: Hon. Douglas W. Herndon, District Judge  
Leon Greenberg Professional Corporation  
Moran Law Firm, LLC  
Eighth District Court Clerk

# EXHIBIT "E"

1                   IN THE SUPREME COURT OF THE STATE OF NEVADA

2   BARBARA GILMORE,  
3   Individually and on behalf of others  
4   similarly situated,

5                   Appellant,

6   vs.

7   DESERT CAB, INC.,

8                   Respondent.  
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Electronically Filed  
Dec 01 2014 04:09 p.m.  
No. 62905  
Tracie K. Lindeman  
Clerk of Supreme Court

*District Court Case No.: A-12-668502-C*

13                   **RESPONDENT, DESERT CAB, INC.'S ANSWERING BRIEF**  
14  
15  
16  
17

/s/Jeffery A. Bendavid

**JEFFERY A. BENDAVID, ESQ.**

Nevada Bar No. 6220

**MORAN BRANDON BENDAVID MORAN**

630 South 4<sup>th</sup> Street

Las Vegas, Nevada 89101

(702) 384-8424

*Attorney for Respondent*  
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1                   IN THE SUPREME COURT OF THE STATE OF NEVADA

2   BARBARA GILMORE,  
3   Individually and on behalf of others  
4   similarly situated,

5                   Appellant,

6                   vs.

7   DESERT CAB, INC.,

8                   Respondent.  
9  
10  
11

Supreme Court Case No.: 62905

12                   RESPONDENT, DESERT CAB, INC.'S NRAP 26.1 DISCLOSURE

13                   The undersigned counsel of record certifies that the following are persons  
14                   and entities as described in *NRAP26.1(a)*, and must be disclosed. These  
15                   representations are made in order that the Justices of this Court may evaluate  
16                   possible disqualification or recusal.

- 17                   1. Parent corporations -- No such corporation.  
18                   2. Publicly held company owning 10% of Respondent's stock -- No such  
19                   corporation.  
20                   3. Respondent's Law Firm -- Moran Brandon Bendavid Moran  
21                   4. Pseudonym -- None

22                   /s/Jeffery A. Bendavid

23                   JEFFERY A. BENDAVID, ESQ.

24                   Nevada Bar No. 6220

25                   MORAN BRANDON BENDAVID MORAN

26                   630 South 4<sup>th</sup> Street

27                   Las Vegas, Nevada 89101

28                   (702) 384-8424

                  Attorney for Respondent

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6. Peot v. Peot,  
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7. Pack v. LaTourette, 128 Nev. Adv. Rep. 25 \* 5-6,  
2773d 1246, 1248 (May 31, 2012) .....4
8. Thomas v. Nevada Yellow Cab Corporation,  
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9. State of Washington v. Bagley,  
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10. United States v. Jackson,  
480 F.3d 1014, 1019 (9<sup>th</sup> Cir. 2007) ..... 20

### II. Nevada Constitution:

1. Article 15, Section 16 .....2, 7, 15



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1 C. The Nevada's Supreme Court Decision in *Thomas v. Nevada Yellow*  
2 *Cab Corporation* Expressly Limits Conduct Taking Place After June  
3 26, 2014.

4 Notwithstanding the above and in the event that this Court elects to consider  
5 Appellant's self-concocted "Second" Issue on Appeal, Appellant does not  
6 demonstrate the absence of an issue of retroactivity as concluded in Appellant's  
7 Opening Brief.<sup>74</sup> Specifically, Appellant first contends in her Opening Brief that  
8 this matter does not present "any retroactive application of law" since Nevada's  
9 Minimum Wage Amendment became effective on November 28, 2006, or the  
10 date that the Nevada Supreme Court canvassed the votes.<sup>75</sup> Therefore, Appellant  
11 incorrectly concludes that no issue remains regarding the retroactive application  
12 of the Court's decision in *Thomas*, which impliedly repealed *NRS 608.250*.<sup>76</sup>

13 As is the case with Appellant's entire argument on this issue, neither *Thomas*  
14 nor this matter ever raised the issue or challenged in any way the effective date of  
15 Nevada's Minimum Wage Amendment.<sup>77</sup> More importantly, the Court in  
16 *Thomas* considered only a single issue - whether Nevada's Minimum Wage  
17  
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25 <sup>74</sup> See Appellant's Opening Brief at 6.

26 <sup>75</sup> See *Id.*

27 <sup>76</sup> See *Id.*

28 <sup>77</sup> See 130 Nev. Adv. Op. 52. See generally, also, Respondent's Appendix at 1-13.

# EXHIBIT 2

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## DISTRICT COURT

## CLARK COUNTY, NEVADA

\*\*\*\*\*

DAN HERRING, an individual;

Plaintiff,

vs.

BOULDER CAB, INC.

Defendants.

Case No.: A-13-691551-C  
Dept. No.: XVI

**AFFIDAVIT OF RICHARD FLAVEN**

STATE OF NEVADA )  
 )ss:  
COUNTY OF CLARK )

I, RICHARD FLAVEN, being first duly sworn under penalty of perjury, deposes and says:

1. Affiant is RICHARD FLAVEN, adult resident of the state of Nevada and testifies as follows:

2. I am the sole owner and President of Boulder Cab, Inc., doing business as Deluxe Taxicab. Before this, I was in law enforcement. Most recently, during the 1990's I was a Taxicab Authority Law Enforcement Officer. In the 1990's I believed that the area of southeast part of the valley was under served. I filed my application and was eventually certificated in October of 1998.

1 I was helped in my application to obtain a certificate for this area by the cab owner Ray Chenoweth  
2 of Nellis Cab. At one time he was a part owner to help get me running and teach me the cab  
3 business. He no longer has any interest in Delxue Cab.

4           3. Deluxe began operating pursuant to the authority granted by the Taxicab Authority in  
5 October, 1998. At all relevant times concerning this suit Deluxe Cab was restricted to its certificated  
6 area. Essentially the areas south of Sunset Rd. and east of I-15. Deluxe Cabs are permitted to pick  
7 up within this area. Deluxe Cabs were not permitted to pick up outside of the area. If a Deluxe Cab  
8 picks up a fare in the area and takes a fare to the strip (for example) my driver must dead head (drive  
9 empty) back to our certificated area. We could not pick up a fare outside of our certificated area.

10 Deluxe, by virtue of the Taxicab Authority Order certifying Deluxe has to provide reasonably  
11 adequate service 24 hours a day to the area. Our area has more residences and businesses, and much  
12 less resort and tourism than the resort corridor of the strip/airport/downtown. We have relatively  
13 busy times, and slower times. Our busy times are not as busy as the resort corridor.

14 All of my drivers are employees, as required by Nevada law. They are not independent contractors.  
15 I have to pay taxes, worker's compensation, and provide health insurance after a probationary  
16 period.

17           I have tried since my certification to provide reasonably adequate service to the area and  
18 have grown with the addition of medallions allocated by the Taxicab Authority. Because of my  
19 small size and restricted area, my dead head or empty miles my cabs do is higher than any other cab  
20 companies. Because the area that I served does not have near the demand the resort corridor has, my  
21 revenue per shift, cab, was the smallest in the industry. For example, attached to this affidavit as  
22 Exhibit 1 is a copy of the Taxicab Authority statistics from November 2012. Deluxe Cab is required  
23 to keep numerous records for the Taxicab Authority. We are also required to provide information  
24 from each trip sheet as to the revenue generated, the trips taken, etc. This is where the information

1 in the Taxicab Authority statistics comes from.

## 2 Unions

3 My small company employees are not unionized. The larger companies in Clark County  
4 have unions which represent the drivers. For example United Steel Workers and ITPE represent  
5 drivers through union contracts at some of the larger companies. Over the years the unions would  
6 negotiate collective bargaining agreements with these companies. For example, Frias Companies is  
7 really five separate cab companies. They have over 700 medallions. Because the unions have  
8 negotiated terms with the larger cab companies, the small to medium size companies that were non-  
9 union, had to compete with these companies in order to obtain drivers. We pay the same percentage,  
10 and offer health insurance.  
11

## 12 Cabs and Compensation

13 Over the years, the cab industry in the Las Vegas area has always paid its cab drivers a  
14 percentage of the book. The percentage of the book is roughly the same with each company,  
15 although the manner in which they get to the book percentage varies. I would say the compensation  
16 of the cab driver is roughly 42% of what's on the meter at the end of a shift.  
17

18 For as long as I can remember, cab drivers were exempted from the minimum wage  
19 requirements. As I understand it, the reason cab drivers were exempted from minimum wage is the  
20 nature of the business. After I purchase a car, pay to get it converted into a cab (meters, paint,  
21 lighting, radio, etc.) and have it inspected by the taxicab authority, I can put it into service. When I  
22 give the keys to a driver, the cab driver is in essence his own individual business. Cab drivers learn  
23 to go to certain areas at certain times when there will be higher demand. We maintain a dispatch, as  
24 required by law, to receive calls for cab service within our area, and then notify the cabs to respond  
25 the calls, as appropriate. The better and more experienced cab drivers will gradually work up their  
26 own regular customers. For example, some of the elderly need cab service to get to medical  
27  
28

1 appointments. If the cab driver provides good service, that customer will want to repeat with the cab  
2 driver. If a customer takes regular trips to medical facilities for example, the cab drivers will give  
3 out their cards with cell numbers so that they can respond to requests for service.

4 Some cab drivers are new, or less ambitious. Some cab drivers will go and sit at an area  
5 where there's likely to be service and just wait. Some cab drivers respond to few or no radio calls.  
6 The cab industry in Las Vegas is premised on the notion that the cab driver wants to work and make  
7 money. The nature of the business is such that once we give the driver the keys to our cab, we have  
8 little control over what the driver does in between fares.  
9

10 Deluxe has been able to retain drivers, but the nature of Deluxe service in our restricted area  
11 is different than the cab companies that may serve the resort corridor. We split the meter with the  
12 driver after costs. In order to run a cab during a shift, gas must be put into the vehicle. Also the  
13 taxicab authority charges a fee for every fare or trip that is taken. The county charges every time we  
14 ~~pick up~~ drop off a fare at McCarran International airport. After costs such as these have been reduced from  
15 the money on the meter, we split the net with the driver. The 50/50 split is competitive in the cab  
16 industry in Las Vegas. Any tips the driver receives, the driver keeps to himself. This percentage is  
17 fairly standard in the Clark County taxicab industry. We also offer health insurance to the driver or  
18 his families after a probationary period. Although many of our drivers have been with us quite  
19 awhile, the cab industry in general has a fairly high turnover rate.  
20  
21

22 We have never tracked hours of cab drivers until most recently. Nevada law states that a cab  
23 driver cannot work more than 12 hours in a shift. Since we first started Deluxe, we set up 12 hour  
24 shifts. Because we have to provide 24 hour service, the 12 hours shift was an easy and efficient way  
25 to schedule drivers. Although there is work 24 hours a day, my restricted area has days and times  
26 where the work is minimal. For example mid week, like Tuesday Wednesday is much slower. Also  
27 nighttime has hours that are very slow. We have traditionally allowed drivers to work up to 12  
28

1 hours. Many shifts we put out have drivers working much less than 12 hours. We've had drivers  
2 work for as little as 6 hours on a regular basis. .

3 Because all of our drivers have to be employees, we also have to comply with a lot of other  
4 statutes and regulations regarding cabs in service, equipment in the cabs, insurance, dispatch, and  
5 other employees to run the business, we have to invest money in the vehicle prior to receiving any  
6 money. In 2012, if we got all of our cabs on the road, and if each cab works two shifts in a given 24  
7 hour period, we need to receive \$58 per shift before we get any income from the driver. Put another  
8 way, after complying with all the rules of getting the cab on the road, and all the other costs in  
9 running our business, a driver has to generate (after costs of running the shift) \$116 before Deluxe  
10 Cab makes any money.  
11

12  
13 I remember when the minimum wage question came up on the ballot. I remember reading it  
14 and noting that it was raising the minimum wage. I heard later that the initiative had passed. I've  
15 always tried to follow the laws. Before and after the initiative raise of the minimum wage, we were  
16 required by the Labor Department and the State of Nevada and the Federal Government to provide  
17 our drivers with notice of their rights. We enrolled in Intuit service which would provide us updated  
18 posters to hang in the shop and the driver's room. These posters notified all of our employees their  
19 rights, including the increased minimum wage. The posters noted the increase in the minimum  
20 wage, after the initiative. However, the posters from the Labor Department as well as the Governor  
21 of Nevada's office listed cab drivers as exempt from the minimum wage. Attached find a copy of  
22 photos of the posters we post in the shop and the driver's room.  
23

24 After we got sued by Mr. Herring for minimum wage is this lawsuit, I became aware that  
25 other companies had been sued. I understood that most if not all of the judges that considered the  
26 issue had ruled that cab drivers were still exempt from the minimum wage. Later, I learned that the  
27 Supreme Court had ruled 4 to 3 that cab drivers were not exempt.  
28



1 I understand that the voter initiative that raised the minimum wage had some additional  
2 language. I understand that exempted from employees are those employees that are unionized under  
3 a collective bargaining agreement.

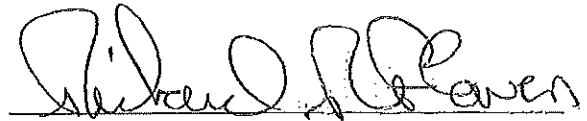
4 Frias Companies is really five separate cab companies. I understand they have over 700  
5 medallions in service and they are unionized under a collective bargaining agreement.

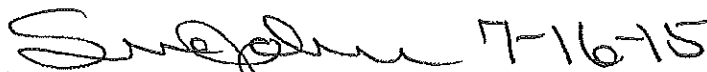
6  
7 I cannot understand the public policy that allows the Frias Companies to pay its employees as  
8 we do, but Frias is exempt, while I'm in litigation. In the end, my cabs generate the least amount of  
9 revenue per cab/shift than any other cab company in Clark County. So, the larger companies that  
10 make much more revenue than I do, can continue to pay the percentage to cab drivers, traditionally  
11 done to ensure the cab driver will work as opposed to do nothing and sit  
12

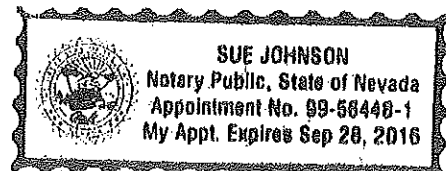
13 Cab drivers are different than most any other employee. We give the cab driver the key and  
14 promise to split the book on the meter, hoping the cab driver wants to make money. I don't  
15 understand why I am now being sued for back wages, penalties, attorney fees and punitive damages  
16 for merely following the law that was issued by the Labor Commission and the Governor. I don't  
17 understand why I have to be subject to a lawsuit for merely complying with the law.  
18

19 What policy is served by allowing the larger cab companies with unions to be exempt from  
20 law suits, back wages, penalties and punitive damages? I follow the same compensation has they do,  
21 and make even less money than they do.

22 FURTHER YOUR AFFIANT SAYETH NAUGHT.

23  
24 

25  
26  7-16-15  
27 Notary Public in and for said Date  
28 County and State





# NEVADA TAXICAB AUTHORITY TAXICAB INDUSTRY STATISTICS NOVEMBER 2013

The data contained herein has been produced and processed from sources believed to be reliable (Taxicab Certificate Holders). No warranty expressed or implied is made regarding accuracy, adequacy, completeness, legality, reliability or usefulness of any information. This disclaimer applies to both isolated and aggregate uses of the information. The Taxicab Authority provides this information on an "as is" basis. All warranties of any kind express or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose, freedom from contamination by computer viruses and non-infringement of proprietary rights ARE DISCLAIMED. Changes could be periodically added to the information herein.

# Nevada Taxicab Authority

## TOTAL MONTHLY TRIPS

### NOVEMBER '13 v. NOVEMBER '12

Taxicab Company	2013	2012	% Increase/ (Decrease)
A-CAB	46,426	42,929	8.15%
ANLV	114,281	110,173	3.73%
ACE	153,228	143,885	6.49%
CHECKER	218,358	196,058	11.37%
DELUXE	24,553	23,497	4.49%
DESERT	155,401	138,068	12.55%
HENDERSON	129,844	121,404	6.95%
LUCKY	108,304	95,440	13.48%
NELLIS	145,397	129,476	12.30%
STAR	141,833	125,963	12.60%
UNION	140,057	130,482	7.34%
VEGAS-WESTERN	126,113	118,000	6.88%
VIRGIN-VALLEY	49,005	43,273	13.25%
WESTERN	124,647	107,906	15.51%
WHITTLESEA	190,308	174,095	9.31%
YELLOW	221,731	197,904	12.04%
<b>INDUSTRY TOTAL</b>	<b>2,089,486</b>	<b>1,898,553</b>	<b>10.06%</b>

# Nevada Taxicab Authority

## REVENUE PER SHIFT

### NOVEMBER '13 v. NOVEMBER '12

Taxicab Company	2013	2012	% Increase/ (Decrease)
A-CAB	\$222.28	\$203.86	9.04%
ANLV	\$243.87	\$219.69	11.01%
ACE	\$244.23	\$224.28	8.90%
CHECKER	\$260.65	\$233.65	11.56%
DELUXE	\$209.97	\$200.28	4.84%
DESERT	\$335.20	\$302.24	10.91%
HENDERSON	\$258.47	\$233.68	10.61%
LUCKY	\$305.76	\$273.35	11.86%
NELLIS	\$320.56	\$292.47	9.60%
STAR	\$265.65	\$236.57	12.29%
UNION	\$243.50	\$222.07	9.65%
VEGAS-WESTERN	\$249.69	\$226.89	10.05%
VIRGIN-VALLEY	\$257.04	\$233.38	10.14%
WESTERN	\$258.19	\$234.64	10.04%
WHITTLESEA	\$253.59	\$228.74	10.86%
YELLOW	\$261.66	\$233.51	12.06%
<b>INDUSTRY AVERAGE</b>	<b>\$264.90</b>	<b>\$239.26</b>	<b>10.72%</b>

# Nevada Taxicab Authority

## TRIPS PER SHIFT

### NOVEMBER '13 v. NOVEMBER '12

Taxicab Company	2013	2012	% Increase/ (Decrease)
A-CAB	13.76	12.79	7.58%
ANLV	16.55	15.02	10.19%
ACE	17.15	15.91	7.79%
CHECKER	18.06	16.32	10.66%
DELUXE	10.52	9.89	6.37%
DESERT	19.32	17.22	12.20%
HENDERSON	17.54	15.64	12.15%
LUCKY	19.52	17.38	12.31%
NELLIS	19.10	17.13	11.50%
STAR	18.26	16.39	11.41%
UNION	16.92	15.61	8.39%
VEGAS-WESTERN	17.50	16.09	8.76%
VIRGIN-VALLEY	17.76	16.23	9.43%
WESTERN	17.78	16.08	10.57%
WHITTLESEA	17.08	15.32	11.49%
YELLOW	18.34	16.49	11.22%
<b>INDUSTRY AVERAGE</b>	<b>17.63</b>	<b>15.94</b>	<b>10.60%</b>

# Nevada Taxicab Authority

## REVENUE PER TRIP

### NOVEMBER '13 v. NOVEMBER '12

Taxicab Company	2013	2012	% Increase/ (Decrease)
A-CAB	\$16.16	\$15.94	1.38%
ANLV	\$14.74	\$14.62	0.82%
ACE	\$14.24	\$14.10	0.99%
CHECKER	\$14.43	\$14.31	0.84%
DELUXE	\$19.96	\$20.24	-1.38%
DESERT	\$17.35	\$17.55	-1.14%
HENDERSON	\$14.74	\$14.94	-1.34%
LUCKY	\$15.66	\$15.73	-0.45%
NELLIS	\$16.78	\$17.07	-1.70%
STAR	\$14.55	\$14.44	0.76%
UNION	\$14.39	\$14.23	1.12%
VEGAS-WESTERN	\$14.27	\$14.10	1.21%
VIRGIN-VALLEY	\$14.48	\$14.38	0.70%
WESTERN	\$14.52	\$14.59	-0.48%
WHITTLESEA	\$14.85	\$14.93	-0.54%
YELLOW	\$14.26	\$14.16	0.71%
<b>INDUSTRY AVERAGE</b>	<b>\$15.02</b>	<b>\$15.01</b>	<b>0.07%</b>

# Nevada Taxicab Authority

## TRIPS PER MEDALLION

### NOVEMBER '13 v. NOVEMBER '12

Taxicab Company	2013	2012	% Increase/ (Decrease)
A-CAB	826	777	6.31%
ANLV	896	870	2.99%
ACE	992	937	5.87%
CHECKER	1,083	977	10.85%
DELUXE	421	415	1.45%
DESERT	1,155	1,034	11.70%
HENDERSON	987	930	6.13%
LUCKY	1,139	1,015	12.22%
NELLIS	1,114	999	11.51%
STAR	1,095	980	11.73%
UNION	969	909	6.60%
VEGAS-WESTERN	989	932	6.12%
VIRGIN-VALLEY	1,049	946	10.89%
WESTERN	927	808	14.73%
WHITTLESEA	988	909	8.69%
YELLOW	1,100	987	11.45%
<b>INDUSTRY AVERAGE</b>	<b>1,011</b>	<b>926</b>	<b>9.18%</b>

# Nevada Taxicab Authority

## REVENUE PER MEDALLION

### NOVEMBER '13 v. NOVEMBER '12

Taxicab Company	2013	2012	% Increase/ (Decrease)
A-CAB	\$13,341	\$12,392	7.66%
ANLV	\$13,208	\$12,725	3.79%
ACE	\$14,118	\$13,206	6.91%
CHECKER	\$15,634	\$13,990	11.75%
DELUXE	\$8,411	\$8,409	0.01%
DESERT	\$20,035	\$18,146	10.41%
HENDERSON	\$15,549	\$13,887	11.97%
LUCKY	\$17,834	\$15,957	11.77%
NELLIS	\$18,691	\$17,055	9.59%
STAR	\$15,931	\$14,139	12.67%
UNION	\$13,948	\$12,927	7.90%
VEGAS-WESTERN	\$14,112	\$13,144	7.37%
VIRGIN-VALLEY	\$15,181	\$13,612	11.52%
WESTERN	\$13,453	\$11,785	14.16%
WHITTLESEA	\$14,680	\$13,568	8.19%
YELLOW	\$15,695	\$13,974	12.31%
<b>INDUSTRY AVERAGE</b>	<b>\$15,188</b>	<b>\$13,894</b>	<b>9.32%</b>



# Nevada Taxicab Authority

## MONTHLY TRIP COMPARISON

### 2013 v. 2012

MONTH	YEAR	TRIPS	YEAR	TRIPS	% Increase/ (Decrease)	# TRIPS +/-
JANUARY	2013	2,215,312	2012	2,270,692	-2.44%	(55,380)
FEBRUARY	2013	2,020,589	2012	2,199,774	-8.15%	(179,185)
MARCH	2013	2,364,816	2012	2,463,533	-4.01%	(98,717)
APRIL	2013	2,222,712	2012	2,264,353	-1.84%	(41,641)
MAY	2013	2,460,383	2012	2,506,426	-1.84%	(46,043)
JUNE	2013	2,385,865	2012	2,391,810	-0.25%	(5,945)
JULY	2013	2,176,986	2012	2,199,461	-1.02%	(22,475)
AUGUST	2013	2,239,098	2012	2,230,041	0.41%	9,057
SEPTEMBER	2013	2,290,393	2012	2,336,228	-1.96%	(45,835)
OCTOBER	2013	2,286,841	2012	2,364,295	-3.28%	(77,454)
NOVEMBER	2013	2,089,486	2012	1,898,553	10.06%	190,933
DECEMBER	2013		2012			
YTD TOTAL	2013	24,752,481	2012	25,125,166	-1.48%	(372,685)

# Nevada Taxicab Authority

## YEAR TO DATE COMPARISON

### NOVEMBER '13 v. NOVEMBER '12

	Month			Year to Date		
	2013	2012	% Δ	2013	2012	% Δ
TRIPS	2,089,486	1,898,553	10.06%	24,752,491	25,125,166	-1.48%
REVENUE	\$31,391,168	\$28,492,309	10.17%	\$365,510,154	\$366,263,304	-0.21%
AVG REV/SHIFT	\$264.90	\$239.28	10.71%	\$284.11	\$272.79	4.15%
AVG TRIPS/SHIFT	17.63	15.94	10.60%	19.24	18.71	2.83%
AVG REV/PER TRIP	\$15.02	\$15.01	0.07%	\$14.77	\$14.58	1.30%
AVG TRIPS/MED	1,011	926	9.18%	1,094	1,111	-1.53%
AVG REV/MED	\$15,188	\$13,894	9.32%	\$16,148	\$16,195	-0.29%
SHIFTS	118,502	119,073	-0.48%	1,286,493	1,342,681	-4.18%
MEDALLIONS	2,066.7996	2,050.7099	0.78%	22,634.3237	22,615.7206	0.08%

# NOVEMBER 2013 NEVADA TAXICAB INDUSTRY MEDALLIONS BY COMPANY

A-CAB	247	GEO	129-2a 7 Days	2p-2p Thru-Stop	MTW 2p-2a	Start of Sunset	Handicap	North/Noth	MIN 12p-12a	2p-2p 7 Days	Laughlin	Laughlin TIM	Com/Specials	TOTALS
247/EQUIVALANCY	36.0000	0.0000	0.0000	10.2000	22.0000	0.0000	4.0000	0.0000	0.0000	3.5000	0.0000	0.0000	0.3333	56.2333
Medallion Plates	36.0000	0.0000	0.0000	17.0000	11.0000	0.0000	4.0000	0.0000	0.0000	7.0000	0.0000	0.0000	0.3333	76.0000
AINLY	74.0000	12.0000	10.0000	10.2000	0.0000	0.0000	4.0000	10.0000	7.0000	0.0000	0.0000	0.0000	0.3333	127.5333
Medallion Plates	74.0000	12.0000	20.0000	17.0000	0.0000	0.0000	4.0000	10.0000	14.0000	0.0000	0.0000	0.0000	0.3333	151.0000
ACE	111.0000	12.0000	17.0000	10.2000	19.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	154.5333
Medallion Plates	111.0000	12.0000	34.0000	17.0000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	178.0000
CHECKER	158.0000	12.0000	17.0000	10.2000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	201.5333
Medallion Plates	158.0000	12.0000	34.0000	17.0000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	225.0000
DELUXE	0.0000	0.0000	0.0000	10.2000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	58.2667
Medallion Plates	0.0000	0.0000	0.0000	17.0000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	55.0000
DESERT	84.0000	12.0000	17.0000	10.2000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	134.0000
Medallion Plates	84.0000	12.0000	34.0000	17.0000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	159.0000
HENDERSON	85.0000	12.0000	17.0000	10.2000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	151.5333
Medallion Plates	85.0000	12.0000	34.0000	17.0000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	155.0000
LUCKY	52.0000	8.0000	17.5000	10.2000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	95.7000
Medallion Plates	52.0000	8.0000	23.0000	17.0000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	114.0000
NELLIS	84.0000	12.0000	17.0000	10.2000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	150.5333
Medallion Plates	84.0000	12.0000	34.0000	17.0000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	154.0000
STAR	86.0000	12.0000	17.0000	10.2000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	129.5333
Medallion Plates	86.0000	12.0000	34.0000	17.0000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	153.0000
UNION	101.0000	12.0000	17.0000	10.2000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	144.5333
Medallion Plates	101.0000	12.0000	34.0000	17.0000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	168.0000
VEGAS WESTERN	84.0000	12.0000	17.0000	10.2000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	127.5333
Medallion Plates	84.0000	12.0000	34.0000	17.0000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	151.0000
VIRGIN VALLEY	29.0000	2.0000	0.0000	10.2000	2.2000	0.0000	3.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	46.7333
Medallion Plates	29.0000	2.0000	0.0000	17.0000	11.0000	0.0000	3.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	52.0000
WESTERN	85.0000	12.0000	17.0000	10.2000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	154.5333
Medallion Plates	85.0000	12.0000	34.0000	17.0000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	158.0000
WHITTLESEA	145.0000	12.0000	17.0000	10.2000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	192.5333
Medallion Plates	145.0000	12.0000	34.0000	17.0000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	216.0000
YELLOW	158.0000	12.0000	17.0000	10.2000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	201.5333
Medallion Plates	158.0000	12.0000	34.0000	17.0000	0.0000	0.0000	4.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.3333	225.0000
EQUIVALANCIES	1376.0000	154.0000	208.5000	165.2000	4.4000	61.0000	63.0000	10.0000	7.0000	3.5000	8.0000	3.2000	4.9955	2,068.7995
TOTAL MEDALLIONS	1,376.0000	154.0000	417.0000	272.0000	22.0000	61.0000	63.0000	10.0000	14.0000	7.0000	8.0000	6.0000	4.9955	2,410.0000

\*= 1 Lucky Laughlin Medallion must be handicap

# NEVADA TAXICAB INDUSTRY BLOWN SHIFTS BY MEDALLION TYPE

COMPANY	24/7	Geo Rest	Time 12p - 2a	Time Thu 2p-Mon 2p	TOTALS	24/7%	GEO%	TIME%	Shifts Reported	Shifts Available*	% BLOWN
A-CAB	0	209	0	0	209	0.00%	100.00%	0.00%	3,375	3,584	5.83%
ANLV	1	263	0	0	264	0.38%	99.62%	0.00%	6,907	7,171	3.68%
ACE	0	36	0	0	36	0.00%	100.00%	0.00%	8,933	8,969	0.40%
CHECKER	0	0	0	0	0	0.00%	0.00%	0.00%	12,088	12,088	0.00%
DELUXE	30	0	0	0	30	100.00%	0.00%	0.00%	2,334	2,364	1.27%
DELUXE (LAUGHLIN)	0	0	0	0	0	0.00%	0.00%	0.00%	See Above	See Above	0.00%
DESERT	0	0	0	0	0	0.00%	0.00%	0.00%	7,832	8,076	0.00%
DESERT (LAUGHLIN)	31	0	0	0	31	100.00%	0.00%	0.00%	213	See Above	0.38%
HENDERSON	43	355	0	0	398	10.80%	89.20%	0.00%	7,404	7,802	5.10%
LUCKY	0	0	0	0	0	0.00%	0.00%	0.00%	5,342	5,687	0.00%
LUCKY (LAUGHLIN)	140	0	0	0	140	100.00%	0.00%	0.00%	205	See Above	2.46%
NELLIS	13	68	0	0	81	16.05%	83.95%	0.00%	7,611	7,692	1.05%
STAR	0	0	0	0	0	0.00%	0.00%	0.00%	7,768	7,768	0.00%
UNION	0	59	0	0	59	0.00%	100.00%	0.00%	8,279	8,338	0.71%
VEGAS WESTERN	0	118	0	0	118	0.00%	100.00%	0.00%	7,208	7,326	1.61%
VIRGIN VALLEY	0	0	0	0	0	0.00%	0.00%	0.00%	2,760	2,760	0.00%
WESTERN	0	640	0	15	655	0.00%	97.71%	2.29%	7,010	7,665	8.55%
WHITTLESEA	18	280	0	0	298	6.04%	93.96%	0.00%	11,145	11,443	2.60%
YELLOW	0	0	0	0	0	0.00%	0.00%	0.00%	12,088	12,088	0.00%
TOTALS	276	2,028	0	15	2,319	11.90%	87.45%	0.65%	118,502	120,821	1.92%

\*= Shifts Reported + Shifts Blown

NOVEMBER 2013

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# EXHIBIT 3



**QUESTION NO. 6**  
**Amendment to the Nevada Constitution**

**CONDENSATION (Ballot Question)**

Shall the Nevada Constitution be amended to raise the minimum wage paid to employees?

Yes.....	<input checked="" type="checkbox"/>	395,367
No.....	<input type="checkbox"/>	180,085

**EXPLANATION (Ballot Question)**

The proposed amendment, if passed, would create a new section to Article 15 of the Nevada Constitution. The amendment would require employers to pay Nevada employees \$5.15 per hour worked if the employer provides health benefits, or \$6.15 per hour worked if the employer does not provide health benefits. The rates shall be adjusted by the amount of increases in the federal minimum wage over \$5.15 per hour, or, if greater, by the cumulative increase in the cost of living measured by the Consumer Price Index (CPI), with no CPI adjustment for any one-year period greater than 3%.

The following arguments for and against and rebuttals for Question No. 6 were prepared by a committee as required by Nevada Revised Statutes (NRS) 293.252.

**ARGUMENT IN SUPPORT OF QUESTION NO. 6**

All Nevadans will benefit from a long-overdue increase in the state's minimum wage through a more robust economy, a decreased taxpayer burden and stronger families.

Low-income workers who do not currently earn enough to cover the basic costs of living for their families – housing, health care, food and child care – will clearly benefit. Many low-income Nevada families live in poverty even though they have full-time jobs. A Nevada worker at the current minimum wage for 40 hours per-week — every week, all year — makes only \$10,712. If the minimum wage had been increased to keep up with rising prices over the last 25 years, it would now bring in \$15,431 per-year – not \$10,712. At the current \$5.15 an hour, many minimum wage workers in Nevada have incomes below the federal poverty line. We want to encourage people to work and be productive members of society. It's economic common sense.

Taxpayers will benefit as an increased minimum wage allows low-income working families to become more financially able to free themselves from costly taxpayer-provided services such as welfare, childcare and public health services.

Our state's economy will benefit as we develop a workforce that will earn more spendable income and put dollars directly into local stores and businesses.

Raising the minimum wage one dollar affirms Nevadan's beliefs that we value work, especially the difficult jobs performed by nursing home employees, childcare workers, and restaurant employees.

Minimum wage workers are not just teenagers working part-time to pay for movies, CDs and fast food. The vast majority of minimum wage workers in Nevada are adults (79% are 20 and older). Most work full-time. Six out of 10 minimum wage earners are women. Twenty-five percent are single mothers. And altogether they are the parents of 25,000 children. The paycheck these workers bring home accounts for about half of their families' earnings.

No matter what special interests and big corporations who oppose a fair minimum wage tell you, virtually every reputable economic study has found that workers don't get fired when minimum wages are passed or increased. In fact, employment increases. Eight of the eleven states that had a minimum wage above the federal level in 2003 are producing more jobs than the United States as a whole.

Raising the minimum wage makes sense for *all* of Nevada. Cast a vote for Nevada working people, Nevada taxpayers, Nevada values and a stronger Nevada economy.

*The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252*

#### **REBUTTAL TO ARGUMENT IN SUPPORT OF QUESTION NO. 6**

Contrary to claims by those eager to change Nevada's constitution, the most credible economic research for over 30 years has shown that minimum wage hikes hurt, rather than help, low-wage workers.

A recent example is the study, *The Effects of Minimum Wages Throughout the Wage Distribution*, by David Neumark, National Bureau of Economic Research; Mark Schweitzer, Federal Reserve Bank of Cleveland; and William Wascher, Board of Governors of the Federal Reserve - Division of Research and Statistics: "The evidence indicates that workers initially earning near the minimum wage are adversely affected by minimum wage increases.... Although wages of low-wage workers increase, their hours and employment decline, and the combined effect of these changes is a decline in earned income." *National Bureau of Economic Research, Working Paper 7519, 5/8/2000.*

The same year, Stanford University's Thomas MaCurdy & Frank McIntyre showed that the effect of a minimum wage increase is very similar to a "sales tax levied only on selective commodities" and conclude: "... three in four of the poorest workers *lose* from shouldering the costs of higher prices resulting from the wage increase. When these benefits and costs are considered, the minimum wage is *ineffective* as an anti-poverty policy."

*The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252*

## ARGUMENT AGAINST QUESTION NO. 6

This constitutional amendment would actually *increase* poverty in Nevada, rather than fight it.

Suffering the most would be single mothers with little education, and other unskilled workers who are just entering the job market.

Today, such entry-level employees are paid not just with wages, but also the chance to learn new job skills. With those new skills—and the work habits they learn—they are able to climb the job ladder and make better lives for themselves and their families.

But if government forces entry-level wages artificially higher, fewer businesses will be able to hire these unskilled workers. That's because their *total* cost to the company—their pay, plus their training costs—will often be greater than these workers contribute to the company. So some workers will be let go, and others will never be hired.

Nevada has long been known as a state where businesses enjoy economic opportunities they cannot find elsewhere. But this constitutional amendment would end all that.

It would suddenly place Nevada at a big economic disadvantage to many other states—states without these high wage requirements. Under this amendment, wages paid in Nevada must, from now on, exceed the federal minimum wage by about \$1 an hour. This would seriously damage Nevada businesses—especially small mom and pop businesses, which usually have fewer resources to work with.

This proposal also would discriminate against non-union companies—which means against the great majority of small businesses in Nevada. It would give labor union officials the power, under the law, to permit *union* companies to hire new employees at rates *below* the new minimum wage. This is unfair to both companies and union members. It is also a virtual invitation to union corruption.

The key to fighting poverty—and to achieving higher wages for *all* workers—is long-term economic growth. Artificially higher wages imposed by government will only obstruct such growth.

This proposed constitutional amendment should be rejected.

Fiscal impact: Negative.

Environmental impact: Neutral.

Public health, safety and welfare impact: Negative.

*The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252*



## REBUTTAL TO ARGUMENT AGAINST QUESTION NO. 6

Raising the minimum wage in Nevada will decrease poverty as it increases people's participation in the State's economy. If increased wages actually made people poorer – as the special interests opposed to this amendment ridiculously claim – *nobody* in Nevada would ever ask for a raise.

Single mothers, as well as anyone else working a minimum wage job, will see an increase in their wages that will actually allow them to pay for housing, healthcare, food and childcare.

All available economic studies show that *everyone* wins when the minimum wage is increased. Low-income workers earn more, become less dependent on welfare and other public programs which eases the burden on taxpayers, and have more money to spend on local goods and services -- which strengthens the economy and generates more jobs.

There is *nothing* in the amendment to raise the minimum wage that would exempt union companies – it's a federal minimum that all companies must follow.

Raise low-income workers' wage. Spur Nevada's economic growth. Generate more buying power to support Nevada businesses. Create jobs. Move low-wage workers away from dependence on public programs and ease taxpayers' burden.

You can achieve *all* of these goals by voting YES on the minimum wage amendment.

*The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252*

## FISCAL NOTE

### FINANCIAL IMPACT – CANNOT BE DETERMINED

Although the proposal to amend the *Nevada Constitution* to increase the minimum wage in Nevada could result in additional costs to Nevada's businesses, the impact on a particular business would depend on the number of employees working at a wage below the new requirement, the amount by which the wages would need to be increased and any actions taken by the business to offset any increased costs associated with the increased wage requirement.

The proposal would, however, result in beneficial financial impacts for employees who receive a wage increase as a result of the proposal and who are not impacted adversely by any actions taken by the business to offset the increased costs associated with the increased wage requirement.

In addition, if the proposal results in an increase in annual wages paid by Nevada's employers, revenues received by the State from the imposition of the Modified Business Tax would also increase.

# RULES TO BE OBSERVED BY EMPLOYERS

EVERY EMPLOYER SHALL POST AND KEEP CONSPICUOUSLY POSTED IN OR ABOUT THE PREMISES WHEREIN ANY EMPLOYEE IS EMPLOYED THIS ABSTRACT OF THE NEVADA WAGE AND HOUR LAWS (NRS 608)

PLEASE NOTE: Every person, firm, association or corporation, or any agent, servant, employee or officer of any such firm, association or corporation, violating any of these provisions is guilty of a misdemeanor

The legislature hereby finds and declares that the health and welfare of workers and the employment of persons in private enterprises in this state are of concern to the state and the health and welfare of persons required to earn their livings by their own endeavors require certain safeguards as to hours of service, working conditions and compensation therefor.

1. Discharge of employee: Whenever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately.
2. Quitting employee: Whenever an employee resigns or quits his employment, the wages and compensation earned and unpaid at the time of his resignation or quitting must be paid no later than the day on which he would have regularly been paid or 7 days after he resigns or quits, whichever is earlier.
3. An employer shall not employ an employee for a continuous period of 8 hours without permitting the employee to have a meal period of at least one-half hour. No period of less than 30 minutes interrupts a continuous period of work.
4. Every employer shall authorize and permit covered employees to take rest periods, which, insofar as practicable, shall be in the middle of each work period. The duration of the rest periods shall be based on the total hours worked daily at the rate of 10 minutes for each 4 hours or major fraction thereof. Authorized rest periods shall be counted as hours worked, for which there shall be no deduction from wages.
5. Effective July 1, 2010 each employer shall pay a wage to each employee of not less than \$7.25 per hour worked if the employer provides health benefits, or \$8.25 per hour if the employer does not provide health benefits. Offering health benefits means making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer. Tips or gratuities received by employees shall not be credited as being any part of or offset against the minimum wage rates.
6. A part of wages or compensation may, if mutually agreed upon by an employee and employer in the contract of employment, consist of meals. In no case shall the value of the meals consumed by such employee be computed or valued at more than 35 cents for each breakfast actually consumed, 45 cents for each lunch actually consumed, and 70 cents for each dinner actually consumed.
7. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee whose wage rate is less than 1 1/2 times the minimum rate prescribed pursuant to the Constitution of the State of Nevada: (a) Works more than 40 hours in any scheduled week of work; or (b) Works more than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee whose wage rate is 1 1/2 times or more than the minimum rate prescribed pursuant to the Constitution, works more than 40 hours in any scheduled week of work.

The above provisions do not apply to: (a) Employees who are not covered by the minimum wage provisions of the Constitution (b) Outside buyers; (c) Employees in a retail or service business if their regular rate is more than 1 1/2 times the minimum wage, and more than half their compensation for a representative period comes from commissions on goods or services, with the representative period being, to the extent allowed pursuant to federal law, not less than one month; (d) Employees who are employed in bona fide executive, administrative or professional capacities; (e) Employees covered by collective bargaining agreements which provide otherwise for overtime; (f) Drivers, drivers' helpers, loaders and mechanics for motor carriers subject to the Motor Carrier Act of 1935, as amended; (g) Employees of a railroad; (h) Employees of a carrier by air; (i) Drivers or drivers' helpers making local deliveries and paid on a trip-rate basis or other delivery payment plan; (j) Drivers of taxicabs or limousines; (k) Agricultural employees; (l) Employees of business enterprises having a gross sales volume of less than \$250,000 per year; (m) Any salesman or mechanic primarily engaged in selling or servicing automobiles, trucks or farm equipment; and (n) A mechanic or workman for any hours to which the provisions of subsection 3 or 4 of NRS 338.020 apply.

8. Every employer shall establish and maintain records of wages for the benefit of his employees, showing for each pay period the following information for each employee: (a) Gross wage or salary; (b) Deductions; (c) Net cash wage or salary; (d) Total hours employed in the pay period by noting the number of hours per day; (e) Date of payment.
9. Wages must be paid semimonthly or more often.
10. Every employer shall establish and maintain regular paydays and shall post a notice setting forth those regular paydays in 2 conspicuous places. After an employer establishes regular paydays and the place of payment, the employer shall not change a regular payday or the place of payment unless, not fewer than 7 days before the change is made, the employer provides the employees affected by the change with written notice in a manner that is calculated to provide actual notice of the change to each such employee.
11. It is unlawful for any person to take all or part of any tips or gratuities bestowed upon his employees. Nothing contained in this section shall be construed to prevent such employees from entering into an agreement to divide such tips or gratuities among themselves.
12. An employer may not require an employee to rebate, refund or return any part of his or her wage, salary or compensation. Also, an employer may not withhold or deduct any portion of such wages unless it is for the benefit of, and authorized by written order of the employee. Further, it is unlawful for any employer who has the legal authority to decrease the wage, salary or compensation of an employee to implement such a decrease unless:
  - (a) Not less than 7 days before the employee performs any work at the decreased wage, salary or compensation, the employer provides the employee with written notice of the decrease; or
  - (b) The employer complies with the requirements relating to the decrease that are imposed on the employer pursuant to the provisions of any collective bargaining agreement or any contract between the employer and the employee.
13. All uniforms or accessories distinctive as to style, color or material shall be furnished, without cost, to employees by their employer. If a uniform or accessory requires a special cleaning process, and cannot be easily laundered by an employee, such employee's employer shall clean such uniform or accessory without cost to such employee.

For additional information or exceptions, contact the Nevada State Labor Commissioner: Carson City 775-687-4850 or Las Vegas 702-486-2650  
TOLL FREE: 1-800-992-0900 Ext. 4850 Internet: [www.LaborCommissioner.com](http://www.LaborCommissioner.com)

REVISED 01-26-2015



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The legislature hereby finds and declares that the health and welfare of workers and the employment of persons in private enterprises in this state are of concern to the state and the health and welfare of persons required to earn their livings by their own endeavors require certain safeguards as to hours of service, working conditions and compensation therefor.

1. Discharge of employee: Whenever an employer discharges an employee, the wages and compensation earned and unpaid at the time of such discharge shall become due and payable immediately.
2. Quitting employee: Whenever an employee resigns or quits his employment, the wages and compensation earned and unpaid at the time of his resignation or quitting must be paid no later than the day on which he would have regularly been paid or 7 days after he resigns or quits, whichever is earlier.
3. An employer shall not employ an employee for a continuous period of 8 hours without permitting the employee to have a meal period of at least one-half hour. No period of less than 30 minutes interrupts a continuous period of work.
4. Every employer shall authorize and permit covered employees to take rest periods, which, insofar as practicable, shall be in the middle of each work period. The duration of the rest periods shall be based on the total hours worked daily at the rate of 10 minutes for each 4 hours or major fraction thereof. Authorized rest periods shall be counted as hours worked, for which there shall be no deduction from wages.
5. Effective July 1, 2010 each employer shall pay a wage to each employee of not less than \$7.25 per hour worked if the employer provides health benefits, or \$8.25 per hour if the employer does not provide health benefits. Offering health benefits means making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer. Tips or gratuities received by employees shall not be credited as being any part of or offset against the minimum wage rates.
6. A part of wages or compensation may, if mutually agreed upon by an employee and employer in the contract of employment, consist of meals. In no case shall the value of the meals consumed by such employee be computed or valued at more than 35 cents for each breakfast actually consumed, 45 cents for each lunch actually consumed, and 70 cents for each dinner actually consumed.
7. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee whose wage rate is less than 1 1/2 times the minimum rate prescribed pursuant to the Constitution of the State of Nevada: (a) Works more than 40 hours in any scheduled week of work; or (b) Works more than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee whose wage rate is 1 1/2 times or more than the minimum rate prescribed pursuant to the Constitution, works more than 40 hours in any scheduled week of work.

The above provisions do not apply to: (a) Employees who are not covered by the minimum wage provisions of the Constitution (b) Outside buyers; (c) Employees in a retail or service business if their regular rate is more than 1 1/2 times the minimum wage, and more than half their compensation for a representative period comes from commissions on goods or services, with the representative period being, to the extent allowed pursuant to federal law, not less than one month; (d) Employees who are employed in bona fide executive, administrative or professional capacities; (e) Employees covered by collective bargaining agreements which provide otherwise for overtime; (f) Drivers, drivers' helpers, loaders and mechanics for motor carriers subject to the Motor Carrier Act of 1935, as amended; (g) Employees of a railroad; (h) Employees of a carrier by air; (i) Drivers or drivers' helpers making local deliveries and paid on a trip-rate basis or other delivery payment plan; (j) Drivers of taxicabs or limousines; (k) Agricultural employees; (l) Employees of business enterprises having a gross sales volume of less than \$250,000 per year; (m) Any salesman or mechanic primarily engaged in selling or servicing automobiles, trucks or farm equipment; and (n) A mechanic or workman for any hours to which the provisions of subsection 3 or 4 of NRS 338.020 apply.

8. Every employer shall establish and maintain records of wages for the benefit of his employees, showing for each pay period the following information for each employee: (a) Gross wage or salary; (b) Deductions; (c) Net cash wage or salary; (d) Total hours employed in the pay period by noting the number of hours per day; (e) Date of payment.
9. Wages must be paid semimonthly or more often.
10. Every employer shall establish and maintain regular paydays and shall post a notice setting forth those regular paydays in 2 conspicuous places. After an employer establishes regular paydays and the place of payment, the employer shall not change a regular payday or the place of payment unless, not fewer than 7 days before the change is made, the employer provides the employees affected by the change with written notice in a manner that is calculated to provide actual notice of the change to each such employee.
11. It is unlawful for any person to take all or part of any tips or gratuities bestowed upon his employees. Nothing contained in this section shall be construed to prevent such employees from entering into an agreement to divide such tips or gratuities among themselves.
12. An employer may not require an employee to rebate, refund or return any part of his or her wage, salary or compensation. Also, an employer may not withhold or deduct any portion of such wages unless it is for the benefit of, and authorized by written order of the employee. Further, it is unlawful for any employer who has the legal authority to decrease the wage, salary or compensation of an employee to implement such a decrease unless:
  - (a) Not less than 7 days before the employee performs any work at the decreased wage, salary or compensation, the employer provides the employee with written notice of the decrease; or
  - (b) The employer complies with the requirements relating to the decrease that are imposed on the employer pursuant to the provisions of any collective bargaining agreement or any contract between the employer and the employee.
13. All uniforms or accessories distinctive as to style, color or material shall be furnished, without cost, to employees by their employer. If a uniform or accessory requires a special cleaning process, and cannot be easily laundered by an employee, such employee's employer shall clean such uniform or accessory without cost to such employee.

For additional information or exceptions, contact the Nevada State Labor Commissioner: Carson City 775-687-4850 or Las Vegas 702-486-2650  
TOLL FREE: 1-800-992-0900 Ext. 4850 Internet: [www.LaborCommissioner.com](http://www.LaborCommissioner.com)

BRIAN SANDOVAL  
Governor  
State of Nevada

THORAN TOWLER  
Nevada Labor Commissioner

BRUCE BRESLOW  
Director  
Nevada Department of Business & Industry

REVISED 11-13-2012



THE UNIVERSITY OF CHICAGO

... ..

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1. **Project Name:** [Redacted]  
 2. **Project Manager:** [Redacted]  
 3. **Project Sponsor:** [Redacted]  
 4. **Project Start Date:** [Redacted]  
 5. **Project End Date:** [Redacted]  
 6. **Project Budget:** [Redacted]  
 7. **Project Status:** [Redacted]  
 8. **Project Description:** [Redacted]  
 9. **Project Objectives:** [Redacted]  
 10. **Project Risks:** [Redacted]  
 11. **Project Deliverables:** [Redacted]  
 12. **Project Stakeholders:** [Redacted]  
 13. **Project Communication Plan:** [Redacted]  
 14. **Project Change Management:** [Redacted]  
 15. **Project Closure:** [Redacted]

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

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1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1862. It is a very long letter, and it contains a great deal of information about the state of the country at that time. The President talks about the war, the economy, and the future of the nation. He also talks about the role of the President and the Congress. The letter is written in a very formal and dignified style, and it is a very important document in the history of the United States.

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

THE INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 08-14-2001 BY 60322 UCBAW/STW

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1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

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1997-1998

1. The first step in the process of identifying a problem is to recognize that a problem exists. This involves gathering information about the situation and identifying the specific issue that needs to be addressed.

[illegible]

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.



1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the situation.

The above was for the purpose of establishing the value of the property in the hands of the decedent at the time of his death. The value of the property in the hands of the decedent at the time of his death was \$100,000.00. The value of the property in the hands of the decedent at the time of his death was \$100,000.00.

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THE UNIVERSITY OF CHICAGO

[illegible]

一、本會為維護會員權益，特訂定此章程。凡加入本會者，均須遵守此章程。  
 二、本會之宗旨在於促進會員間之交流與合作，共同發展我國之經濟建設。  
 三、本會之組織由全體會員大會及執行委員會組成。執行委員會設主席一人，副主席二人，秘書長一人，並設各專任委員若干人。  
 四、本會之經費來源包括：(一)會員年費；(二)社會捐助；(三)其他合法收入。經費支出應以本會業務需要為限。  
 五、本會對於違反章程或損害會員利益之行為，有權予以處分。處分種類包括警告、停權及除名等。  
 六、本章程自通過之日起施行。如有修改，應經全體會員大會三分之二以上多數通過。



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The first of these is the fact that the
 government has been unable to
 maintain a stable exchange rate.
 This has led to a loss of confidence
 in the currency and a consequent
 increase in inflation. The second
 is the fact that the government
 has been unable to attract foreign
 investment. This has led to a
 shortage of funds for development
 and a consequent stagnation of
 the economy. The third is the fact
 that the government has been
 unable to maintain a stable
 political situation. This has led to
 a loss of confidence in the
 government and a consequent
 increase in corruption.



...agreed to prevent such employees from entering into an agreement to change such law ...  
An employer may not require an employee to inform, report or return any part of his or her ...  
employer may not withhold or deduct any portion of such wages unless it is for the benefit of ...  
employee. Further, it is unlawful for any employer who has the legal authority to determine the ...  
right to implement such a disciplinary action.

Not less than 7 days before the employee performs any work in the designated region, ...  
when the employee with written notice of the discipline, or

1) The employer complies with the requirements relating to the discipline and the employee ...  
waives all any exclusive bargaining agreement or any other contract between the employer and the ...

An employer or association obligated to do so by law, order or contract shall be liable for ...  
uniform or necessary repairs or special clothing provided, and covered by such insurance by an ...  
in claim such uniform or necessary repairs shall be such employee.

For information information or questions, contact the Nevada State Labor Commissioner, Carson City, NV 89501.

TOLL FREE 1-800-955-2600 Ext. 4000

Issued under Labor Commissioner's Order July 17, 1997

EMPLOYEE INFORMATION	Nevada Labor Commissioner	Nevada Department
Department		
Number of Employees		

# NEVADA SAFETY AND

# HEALTH PROTECTION

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Petitioners,

Respondents,

DAN HERRING,

Real party in interest

Case No.: A-13-691551-C

Electronically Filed  
Oct 08 2015 09:47 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

Respondents,

DAN HERRING,

Real party in interest

## PETITIONER'S APPENDIX TO PETITION FOR WRIT OF MANDAMUS

Nevada Bar No. 005167

**WINNER & CARSON, P.C.**

510 South Eighth Street

Las Vegas, Nevada 89101

T: 702-471-1111; F: 702-471-0110

raw@winnercarson.com



1 **APPENDIX**

2 **No.**

**DOCUMENT**

**PAGES**

3  
4 **Volume 1**

5 1	Herring's First Amended Complaint	PA001-009
6 2	Boulder Cab's Motion to Dismiss	PA010-059
7 3	Herring's Opposition to Motion to Dismiss	PA060-118
8 4	Boulder Cab's Reply to Motion to Dismiss	PA119-131
9 5	Order Denying Boulder's Motion to Dismiss	PA132-134



CLERK OF THE COURT

1 **ACOM**  
2 **LEON GREENBERG, ESQ., NSB 8094**  
3 **DANA SNIEGOCKI, ESQ., NSB 11715**  
4 **Leon Greenberg Professional Corporation**  
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11 Attorneys for Plaintiff

12  
13  
14 **DISTRICT COURT**  
15  
16 **CLARK COUNTY, NEVADA**

17 **DAN HERRING, Individually and on**  
18 **behalf of others similarly situated,**

19 **Plaintiff,**

20 **vs.**

21 **BOULDER CAB, INC.,**

22 **Defendant.**

23 **Case No.: A-13-691551-C**

24 **Dept.: XVI**

25 **FIRST AMENDED**  
26 **COMPLAINT**

27  
28  
29 **DAN HERRING, Individually and on behalf of others similarly situated, by and**  
30 **through his attorney, Leon Greenberg Professional Corporation, as and for a**  
31 **Complaint against the defendant, states and alleges, as follows:**

32 **JURISDICTION, PARTIES AND PRELIMINARY STATEMENT**

33  
34 **1. The plaintiff, DAN HERRING, (the “individual plaintiff” or the “named**  
35 **plaintiff”) is a resident of Clark County in the State of Nevada and is a former**  
36 **employee of the defendant.**

37  
38 **2. The defendant, BOULDER CAB, INC., (hereinafter referred to as**  
39 **“Deluxe Taxicab” or “defendant”) is a corporation existing and established pursuant to**  
40 **the laws of the State of Nevada with its principal place of business in the County of**

1 Clark, State of Nevada and conducts business in Nevada.

2 **CLASS ACTION ALLEGATIONS**

3 3. The plaintiff brings this action as a class action pursuant to Nev. R. Civ.  
4 P. §23 on behalf of himself and a class of all similarly situated persons employed by  
5 the defendant in the State of Nevada.

6 4. The class of similarly situated persons consists of all persons employed  
7 by defendant in the State of Nevada during the applicable statute of limitations periods  
8 prior to the filing of this Complaint continuing until date of judgment, such persons  
9 being employed as Taxi Cab Drivers (hereinafter referred to as "cab drivers" or  
10 "drivers") such employment involving the driving of taxi cabs for the defendant in the  
11 State of Nevada.

12 5. The common circumstance of the cab drivers giving rise to this suit is that  
13 while they were employed by defendant they were not paid the minimum wage  
14 required by Nevada's Constitution, Article 15, Section 16 for many or most of the days  
15 that they worked in that their hourly compensation, when calculated pursuant to the  
16 requirements of said Nevada Constitutional Provision, did not equal at least the  
17 minimum hourly wage provided for therein.

18 6. The named plaintiff is informed and believes, and based thereon alleges  
19 that there are at least 100 putative class action members. The actual number of class  
20 members is readily ascertainable by a review of the defendant's records through  
21 appropriate discovery.

22 7. There is a well-defined community of interest in the questions of law and  
23 fact affecting the class as a whole.

24 8. Proof of a common or single set of facts will establish the right of each  
25 member of the class to recover. These common questions of law and fact predominate  
26 over questions that affect only individual class members. The individual plaintiff's  
27 claims are typical of those of the class.

28 9. A class action is superior to other available methods for the fair and

1 efficient adjudication of the controversy. Due to the typicality of the class members'  
2 claims, the interests of judicial economy will be best served by adjudication of this  
3 lawsuit as a class action. This type of case is uniquely well-suited for class treatment  
4 since the employer's practices were uniform and the burden is on the employer to  
5 establish that its method for compensating the class members complies with the  
6 requirements of Nevada law.

7 10. The individual plaintiff will fairly and adequately represent the interests  
8 of the class and has no interests that conflict with or are antagonistic to the interests of  
9 the class and has retained to represent him competent counsel experienced in the  
10 prosecution of class action cases and will thus be able to appropriately prosecute this  
11 case on behalf of the class.

12 11. The individual plaintiff and his counsel are aware of their fiduciary  
13 responsibilities to the members of the proposed class and are determined to diligently  
14 discharge those duties by vigorously seeking the maximum possible recovery for all  
15 members of the proposed class.

16 12. There is no plain, speedy, or adequate remedy other than by maintenance  
17 of this class action. The prosecution of individual remedies by members of the class  
18 will tend to establish inconsistent standards of conduct for the defendant and result in  
19 the impairment of class members' rights and the disposition of their interests through  
20 actions to which they were not parties. In addition, the class members' individual  
21 claims are small in amount and they have no substantial ability to vindicate their  
22 rights, and secure the assistance of competent counsel to do so, except by the  
23 prosecution of a class action case.

24 **AS AND FOR A FIRST CLAIM FOR RELIEF ON BEHALF OF THE NAMED**  
25 **PLAINTIFF AND ALL PERSONS SIMILARLY SITUATED PURSUANT TO**  
**NEVADA'S CONSTITUTION**

26 13. The named plaintiff repeats all of the allegations previously made and  
27 brings this First Claim for Relief pursuant to Article 15, Section 16, of the Nevada  
28 Constitution.

1           14. Pursuant to Article 15, Section 16, of the Nevada Constitution the named  
2 plaintiff and the class members were entitled to an hourly minimum wage for every  
3 hour that they worked and the named plaintiff and the class members were often not  
4 paid such required minimum wages.

5           15. The named plaintiff seeks all relief available to him and the alleged class  
6 under Nevada's Constitution, Article 15, Section 16 including appropriate injunctive  
7 and equitable relief to make the defendant cease its violations of Nevada's  
8 Constitution and a suitable award of punitive damages.

9           16. The defendant's violation of Article 15, Section 16, of the Nevada  
10 Constitution involved malicious and/or fraudulent and/or oppressive conduct by the  
11 defendant sufficient to warrant an award of punitive damages for the following,  
12 amongst other reasons:

13               (a) Defendant, despite having and being aware of an express obligation  
14 under Article 15, Section 16, of the Nevada Constitution, such obligation  
15 commencing no later than July 1, 2007, to advise the plaintiff and the  
16 class members, in writing, of their entitlement to the minimum hourly  
17 wage specified in such constitutional provision, failed to provide such  
18 written advisement;

19  
20               (b) Defendant was aware that the highest law enforcement officer of the  
21 State of Nevada, the Nevada Attorney General, had issued a public  
22 opinion in 2005 that Article 15, Section 16, of the Nevada Constitution,  
23 upon its effective date, would require defendant and other employers of  
24 taxicab drivers to compensate such employees with the minimum hourly  
25 wage specified in such constitutional provision. Defendant consciously  
26 elected to ignore that opinion and not pay the minimum wage required by  
27 Article 15, Section 16, of the Nevada Constitution to its taxi driver  
28 employees in the hope that they would be successful, if legal action was

1 brought against it, in avoiding paying some or all of such minimum  
2 wages;

3  
4 (c) Defendant, to the extent it believed it had a colorable basis to  
5 legitimately contest the applicability of Article 15, Section 16, of the  
6 Nevada Constitution to its taxi driver employees, made no effort to seek  
7 any judicial declaration of their obligation, or lack of obligation, under  
8 such constitutional provision and to pay into an escrow fund any amounts  
9 it disputed were so owed under that constitutional provision until such a  
10 final judicial determination was made.

11 17. Defendant engaged in the acts and/or omissions detailed in paragraph 16 in  
12 an intentional scheme to maliciously, oppressively and fraudulently deprive its taxi  
13 driver employees of the hourly minimum wages that were guaranteed to those  
14 employees by Article 15, Section 16, of the Nevada Constitution. Defendant so acted  
15 in the hope that by the passage of time whatever rights such taxi driver employees had  
16 to such minimum hourly wages owed to them by the defendant would expire, in whole  
17 or in part, by operation of law. Defendant so acted consciously, willfully, and  
18 intentionally to deprive such taxi driver employees of any knowledge that they might  
19 be entitled to such minimum hourly wages, despite the defendant's obligation under  
20 Article 15, Section 16, of the Nevada Constitution to advise such taxi driver  
21 employees of their right to those minimum hourly wages. Defendant's malicious,  
22 oppressive and fraudulent conduct is also demonstrated by their failure to make any  
23 allowance to pay such minimum hourly wages if they were found to be due, such as  
24 through an escrow account, while seeking any judicial determination of their  
25 obligation to make those payments. The rights secured to the plaintiffs and the class  
26 members under Nevada's Constitution, Article 15, Section 16, for a minimum level of  
27 remuneration for their labor as defendant's employees, constitute property rights, in  
28 that such level of remuneration constitutes property of the plaintiff and the class

1 members, to wit, a sum of money that they have a right to possess for the inalienable  
2 value of their labor, which labor the defendant obtained from them as an employer.  
3 Defendant has obtained such property, the minimum wages properly the property of  
4 the plaintiff and the class members, illegally and defendant still possesses the same,  
5 the defendant having also committed a conversion of such property. As a result,  
6 defendant should be, and is, subject to all forms of equitable relief and legal sanctions  
7 necessary to return such property to the plaintiff and the class members and/or make  
8 them whole, including, without limitation, a suitable court order directing that the  
9 defendant make restitution to the plaintiff and the class members for the full value of  
10 all such property taken and held by the defendant, with interest and an award of all  
11 proper incidental, consequential and/or punitive damages available under the law or in  
12 equity appropriate to remedy such violations of the plaintiff's and the class members'  
13 rights under Nevada's Constitution, Article 15, Section 16.

14 18. The named plaintiff seek all relief available to him and the alleged class  
15 under Nevada's Constitution, Article 15, Section 16 including appropriate injunctive  
16 and equitable relief to make the defendants cease their violations of Nevada's  
17 Constitution and a suitable award of punitive damages.

18 19. The named plaintiff on behalf of himself and the proposed plaintiff  
19 class members, seeks, on this First Claim for Relief, a judgment against the defendant  
20 for minimum wages owed since November 28, 2006 and continuing into the future,  
21 such sums to be determined based upon an accounting of the hours worked by, and  
22 wages actually paid to, the plaintiff and the class members, a suitable injunction  
23 directing restitution to the plaintiff and the class members of all of their minimum  
24 wages taken by the defendant and not paid to the plaintiff and the class members, and  
25 other equitable relief barring the defendants from continuing to violate Nevada's  
26 Constitution, a suitable award of punitive damages, and an award of attorneys' fees,  
27 interest and costs, as provided for by Nevada's Constitution and other applicable laws.

28

1        20. The named plaintiff on behalf of himself and the proposed plaintiff class  
2 members, seeks, on this First Claim for Relief, a judgment against the defendant for  
3 minimum wages, such sums to be determined based upon an accounting of the hours  
4 worked by, and wages actually paid to, the plaintiff and the class members, a suitable  
5 injunction and other equitable relief barring the defendant from continuing to violate  
6 Nevada's Constitution, a suitable award of punitive damages, and an award of  
7 attorneys' fees, interest and costs, as provided for by Nevada's Constitution and other  
8 applicable laws.

9                    **AS AND FOR A SECOND CLAIM FOR RELIEF PURSUANT TO**  
10                   **NEVADA REVISED STATUTES § 608.040 ON BEHALF OF THE NAMED**  
11                   **PLAINTIFF**  
12                   **AND THE PUTATIVE CLASS**

13        21. Plaintiff repeats and reiterates each and every allegation previously made  
14 herein.

15        22. The named plaintiff brings this Second Claim for Relief against the  
16 defendant pursuant to Nevada Revised Statutes § 608.040 on behalf of himself and the  
17 alleged class of all similarly situated employees of the defendant.

18        23. The named plaintiff has been separated from his employment with the  
19 defendant and at the time of such separation was owed unpaid wages by the defendant.

20        24. The defendant has failed and refused to pay the named plaintiff and  
21 numerous members of the putative plaintiff class who are the defendant's former  
22 employees their earned but unpaid wages, such conduct by such defendant constituting  
23 a violation of Nevada Revised Statutes § 608.020, or § 608.030 and giving such  
24 named plaintiff and similarly situated members of the putative class of plaintiffs a  
25 claim against the defendant for a continuation after the termination of their  
26 employment with the defendant of the normal daily wages defendant would pay them,  
27 until such earned but unpaid wages are actually paid or for 30 days, whichever is less,  
28 pursuant to Nevada Revised Statutes § 608.040.

29        25. As a result of the foregoing, the named plaintiff seeks on behalf of himself



1 and the similarly situated putative plaintiff class members a judgment against the  
2 defendant for the wages owed to him and such class members as prescribed by Nevada  
3 Revised Statutes § 608.040, to wit, for a sum equal to up to thirty days wages, along  
4 with interest, costs and attorneys' fees.

5 WHEREFORE, plaintiff demands the relief on each cause of action as alleged  
6 aforesaid.

7 Plaintiff demands a trial by jury on all issues so triable.

8  
9 Dated this 1<sup>st</sup> day of June, 2014.

10  
11 Leon Greenberg Professional Corporation

12  
13 By: /s/ Leon Greenberg

14 LEON GREENBERG, Esq.  
15 Nevada Bar No.: 8094  
16 2965 South Jones Blvd- Suite E3  
17 Las Vegas, Nevada 89146  
18 (702) 383-6085

19 Attorney for Plaintiff  
20  
21  
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1 CSERV  
2 LEON GREENBERG, ESQ., SBN 8094  
3 DANA SNEGOCKI, ESQ., SBN 11715  
4 Leon Greenberg Professional Corporation  
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(702) 383-6085  
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Attorneys for Plaintiffs

7  
8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 DAN HERRING, Individually and on  
11 behalf of others similarly situated,

12 Plaintiff,

13 vs.

14 BOULDER CAB, INC.,

15 Defendant.

Case No.: A-13-691551-C

Dept.: XVI

CERTIFICATE OF SERVICE

16  
17 The undersigned certifies that on June 1, 2015, she served the within:

18 FIRST AMENDED COMPLAINT

19 by court electronic service to:

20  
21 Robert A. Winner  
22 WINNER & CARSON, P.C.  
23 510 South Eighth Street  
24 Las Vegas, NV 89101

25 /s/ Dana Sniegocki  
26 Dana Sniegocki  
27  
28



CLERK OF THE COURT

1 Robert A. Winner, Esq.  
Nevada Bar No. 5167  
2 Brent A. Carson, Esq.  
Nevada Bar No. 5903  
3 **WINNER & CARSON, P.C.**  
510 South Eighth Street  
4 Las Vegas, Nevada 89101  
Tele: 471-1111  
5 Fax: 471-0110  
6 *Attorneys for Defendants,*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

\*\*\*\*\*

8 DAN HERRING, an individual;

9 Plaintiff,

10 vs.

11 BOULDER CAB, INC.

12 Defendants.

) Case No.: A-13-691551-C

) Dept. No.: XVI

17 **MOTION TO DISMISS/MOTION FOR SUMMARY JUDGMENT**

18 COMES NOW, Defendant, BOULDER CAB, INC., by and through its attorneys of record,  
19 ROBERT A. WINNER and BRENT A. CARSON, of the law firm of WINNER & CARSON, P.C., and  
20 hereby submits its Motion to Dismiss Plaintiff's Amended Complaint pursuant to NRCP 12(b)(5), and  
21 NRCP 56, Summary Judgment.  
22

23 //

24 //

25 //

26 //


27 //

28 //

1 This Motion is made and based upon the pleadings and papers on file herein, the Points and  
2 Authorities submitted herewith and by this reference made a part hereof.

3 DATED this 17 day of July, 2014.

4  
5 WINNER & CARSON, P.C.

6  
7   
8 ROBERT A. WINNER  
9 Nevada Bar No. 5167  
10 BRENT A. CARSON  
11 Nevada Bar No. 5903  
12 510 South Eighth Street  
13 Las Vegas, Nevada 89101  
14 Attorneys for Defendant, Boulder Cab, Inc.

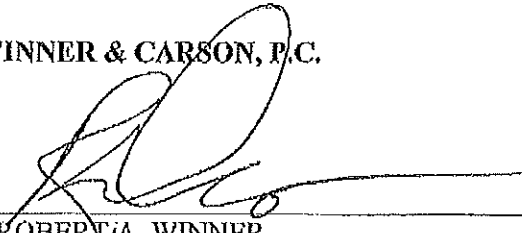
15 TO: ALL INTERESTED PARTIES HEREIN; and

16 TO: THEIR ATTORNEYS OF RECORD.

17 PLEASE TAKE NOTICE that the foregoing MOTION TO DISMISS/MOTION FOR  
18 SUMMARY JUDGMENT will come on for hearing before Dept. XVI of the above-entitled court on  
19 the 18 day of August, 2015 at 9:00 a.m./p.m. or as soon thereafter as counsel may be  
20 heard.

21 DATED this 17 day of July, 2015.

22  
23 WINNER & CARSON, P.C.

24   
25 ROBERT A. WINNER  
26 Nevada Bar No. 5167  
27 BRENT A. CARSON  
28 Nevada Bar No. 5903  
510 South Eighth Street  
Las Vegas, Nevada 89101  
Attorneys for Defendant, Boulder Cab, Inc.

✓  
col

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 Boulder Cab dba Deluxe Taxicab is one of the smallest cab companies in Clark County. At  
5 all relevant time, Deluxe was restricted to serving the southeast part of the county, and could not  
6 serve the resort corridor. Generally, Deluxe's certificated area was to pick up rides south of Sunset  
7 Road and east of I-15. Deluxe could only pick up fares in this restricted area. If Deluxe picked up a  
8 fare from its area and took that passenger (as required by law) outside its area (for example the strip)  
9 Deluxe Taxicab would have to deadhead (travel back without passengers) back to its certificated  
10 area. Deluxe Taxicab generates the fewest cab rides of any of the cab companies. It generates the  
11 least revenue, least revenue per medallion, and least revenue per shift than any other cab company in  
12 Clark County. Exhibit 1

15 Since being certificated in 1998, at all relevant times Deluxe was restricted to its area.  
16 However, the manner in which it compensated its driver was similar to the rest of the taxicab  
17 industry. Deluxe, like other companies, pays the driver a percentage of its book (the taxicab meter  
18 total). After expenses of the shift are paid, Deluxe Cab splits the meter with its driver 50/50. The  
19 cab driver keeps all tips. All of the cab drivers in the county are compensated in roughly the same  
20 way. Because a cab company has very little control over what a cab driver does once he leaves the  
21 yard for his shift, a percentage motivates the drivers to work and generate money. A cab driver  
22 generates money for himself, as well as the company. Because Deluxe generates the least revenue  
23 for any of its drivers, in part based on its restricted certificated area, Deluxe has trouble recruiting  
24 drivers even though it pays comparably (based on a percentage). Many drivers that gravitate toward  
25 working at Deluxe are older drivers. In 2012, roughly 41percent of our drivers were over 62, of  
26 which at least 50% were drawing social security. Many of our drivers are cautious about earning too

1 much because they don't want their social security benefits cut. However, they like being able to  
2 work while drawing social security. In general, these drivers are easier on the cabs and other  
3 equipment. They are good with the local residential customers and we have a more relaxed attitude  
4 toward drivers during their shift, allowing them to go on personal errands and take longer breaks.  
5 They're experienced drivers who have learned the peaks and valleys of cab service demand in our  
6 area. While we monitor the average book of our drivers, we are also mindful of the older driver's  
7 circumstances.

9 Other drivers that come to Deluxe Cab sometime work for us for a relatively brief period,  
10 before moving on to one of the larger companies. Often times we are not able to get all of our cabs  
11 out on shift for a number of reasons, including not enough drivers.

13 As noted earlier, a number of our employees are older, social security eligible drivers. While  
14 they don't necessarily generate a high book, they do generate steady money. They are our most  
15 senior drivers and have been with the company a long time.

16 New drivers, naturally have trouble learning the cab business and making money. New hires  
17 are on a probationary period for 90 days. It is very common for us to lose money on probationary  
18 drivers as they learn the cab business, the peaks and valleys of demand and the locations where  
19 demand is needed. Also a driver needs to develop a client list with locals which takes time.

21 Deluxe has to invest money in buying a car, converting it to a cab, installing meters, lights,  
22 drive-cams as well as hiring mechanics, dispatchers and other personnel that form the foundation for  
23 the cab driver and the company to make money. In 2012, If Deluxe got all of its cabs on the road for  
24 both twelve hour shifts every day, Deluxe would have to receive \$58 from the driver's shift to cover  
25 the cost. Put another way, and based on a 50/50 split of the net book, the driver would have to  
26 generate \$116, net, before Deluxe Cab would make any money.

[illegible]

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1 proof in the light most favorable to the non-moving party, “the non-moving party must show specific  
2 facts, rather than general allegations and conclusion” in order to successfully oppose a motion for  
3 summary judgment. LaMantia v. Redisi, 188 Nev. 27, 38 P.3d 877 (2002). Wood v. Safeway, Inc.,  
4 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

#### 5 **RETROACTIVE VERSUS PROSPECTIVE**

6  
7 The 4-3 opinion in Thomas must be applied prospectively. A retrospective application  
8 results in substantial inequities. Deluxe has reasonably relied on the Nevada statute exempting cab  
9 drivers. Most district judges (before Thomas) ruled cab drivers were still exempt. Public policy  
10 demands Deluxe not be punished for relying on Nevada State legislature and executive directives. A  
11 retroactive application that exempts wealthier union companies, but punishes Deluxe offends public  
12 policy and offends the very concepts of equity and justice.

13  
14 In Nevada, the general presumption in civil cases is that judicial decisions apply  
15 retroactively. However, there are exceptions, like public policy. For example, Hustead v. Farmers  
16 Insurance, 90 Nev. 354, 526 P. 2d 1116 (1974) held that two Supreme Court decisions relating to  
17 UIM coverage would not be applied retroactively.

18  
19 Ziglinski v. Farmers Insurance, 93 Nev. 23 (1977) the Supreme Court considered the  
20 retroactive versus prospective effect of the Supreme Court decision abrogating the doctrine of  
21 interspousal immunity in motor vehicle accidents. Appellant wanted the abrogation of the doctrine  
22 applied retrospectively to the time of her accident. The Supreme Court disagreed, “Because there  
23 has been justifiable reliance on earlier decisions upholding inter spousal immunity; and, since  
24 prospectivity fosters stability, only prospective effect from the date it was rendered will be given to  
25 [the Supreme Court decision]”(emphasis added) 93 Nev. at 24. Also see Duke v. Duke, 98 Nev. 148  
26 (1982) where our Supreme Court considered whether United States Supreme Court decision  
27 regarding military retirement pay should be given retroactive effect. Absent language suggesting the  
28

1 United States Supreme Court intended its decision to apply retroactively, the court would not  
2 invalidate the prior court decrees.

3 “New rules apply prospectively unless they are rules of constitutional law, and then they  
4 apply retroactively only under certain circumstances (citation omitted). Brown announces a rule of  
5 law which is not constitutionally demanded, and this court’s opinion correctly indicates the rule is to  
6 be applied prospectively” Schoels v. State, 115 Nev. 33, 36 (1999)

7  
8 Nunez-Reyes v. Holder, 646 F.3<sup>rd</sup> 684 (9<sup>th</sup> Circuit 2011) the court considered whether or not  
9 the new rule would be given prospective versus retroactive effect, the court announced a new rule of  
10 law in civil cases: The Chevron Oil test applied:

11 1) whether the decision establishes a new principle of law; 2) whether retrospective  
12 operation will further or retard the rules operation in light of its history, purpose, and  
13 effect, 3) whether our decision could produce substantial ~~and~~ equitable results if applied  
14 retroactively. Id at 692. *in*

15 There is no doubt the Thomas decision should be prospective. The Thomas court clearly  
16 established a new rule of law: cab drivers were no longer exempt from the minimum wage. It’s clear  
17 that substantial inequities will result to apply the Thomas decision retroactively. In fact, substantial  
18 inequities have already been visited on Deluxe, among others. Deluxe Taxicab relied on the statute,  
19 as well as notices from the Labor Commission and the Governor that cab drivers are exempt from  
20 the minimum wage law. Cab drivers at Deluxe, are subject to the minimum wage, now, but cab  
21 drivers at larger companies that have unions are not. Where is the equity exempting the Frias  
22 Companies while at the same time subjecting Deluxe, to back pay, penalties, attorney fees and  
23 possibly punitive damages for merely compensating its drivers in the same manner as those  
24 companies under a collective bargaining agreement? Deluxe reasonably relied on the statute, the  
25 history of cab driver compensation, as well legal notices from the Labor Department and Governor  
26 Sandoval.  
27

28 Until Thomas, most judges that considered the issue ruled that the amendment did not repeal

1 Nevada statute exempting cab drivers.

2 California courts also recognize exceptions to the general rule of retroactivity, when  
3 considerations of fairness and public policy are so compelling that on balance they outweigh  
4 considerations that underlie the basic rule. The court may decline to follow the standard retroactive  
5 rule when application of the decision would raise substantial concerns about the effects of the new  
6 rule on general administration of justice, or would unfairly undermine the reasonable reliance of  
7 parties on the previously existing state of law. See Newman v. Emerson Radio, 48 Cal. 3d 973, 772  
8 P.2d 1059 (1989), Industrial Indemnity v. Toucheross, 13 Cal. App. 4<sup>th</sup> 1086 (1993). Also see Smith  
9 v. Rae-Ventor Law Group, 29 Cal. 4<sup>th</sup> 345, 58 P. 3d 367 (2002)

12 IV.

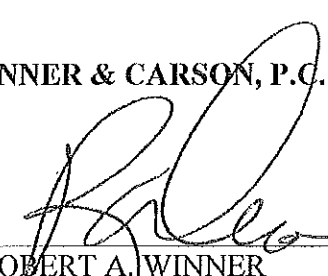
13 CONCLUSION

14 There is no material fact in dispute. Justice and fair play demand prospective application of  
15 Thomas. The Thomas opinion uses language of prospective application. The ruling "supersedes and  
16 supplants " the exemption, Thomas 327 P.3d at 522.

18 Deluxe prays this court release it from further damages and possible penalties and punitives  
19 by dismissing/striking Plaintiff's Complaint for claims prior to June 26 2014.

20 DATED this 17 day of July, 2015.

22 WINNER & CARSON, P.C.

23   
24 ROBERT A. WINNER

25 Nevada Bar No. 5167

26 BRENT A. CARSON

27 Nevada Bar No. 5903

28 510 South Eighth Street

Las Vegas, Nevada 89101

Attorneys for Defendant, Boulder Cab, Inc.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20<sup>th</sup> day of July, 2015, I served a true and correct copy of the foregoing **MOTION TO DISMISS/MOTION FOR SUMMARY JUDGMENT**, by electronic service as follows:

Leon Greenberg  
2965 S. Jones Blvd., Ste. E-4  
Las Vegas, Nevada 89146  
*Attorney for Plaintiff*

  
\_\_\_\_\_  
*An Employee of Winner & Carson, P.C.*

# EXHIBIT 1

Robert A. Winner, Esq.  
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*Attorneys for Defendant,*  
**BOULDER CAB, INC.**

## DISTRICT COURT

## CLARK COUNTY, NEVADA

\*\*\*\*\*

DAN HERRING, an individual;  
Plaintiff,

Case No.: A-13-691551-C  
Dept. No.: XXVII

vs.

BOULDER CAB, INC.

Defendants.

## AFFIDAVIT OF STEVE FINDLAY

STATE OF NEVADA     )  
                              )ss:  
COUNTY OF CLARK    )

I, STEVE FINDLAY, being first duly sworn under penalty of perjury, deposes and says:

1. Affiant is STEVE FINDLAY, adult resident of the state of Nevada and testifies as follows:

2. I am the General Manager for Deluxe Cab and have been a manager in charge of the drivers for 11 years.

3. When I first started at Deluxe Cab I was a cab driver. I worked regular shifts, but my shifts were six hours. I was allowed go out for twelve but I was a part time driver and six hours is

1 what worked with my schedule as I had another job as well.

2 4. Since I've worked for Deluxe Cab and up until the time of this law suit, Deluxe Cab  
3 has been restricted to the southeast part of the valley, generally south of Sunset and east of I-15. We  
4 don't have as many cabs as some of the other companies and are one of the smallest cab companies  
5 in Clark County. For example, in March of 2011 we had 36 cabs. In March of 2012 we had 42 cabs.  
6 If we are able to put all of our cabs on the road, and work two shifts, we would be able to put out 72  
7 shifts in March 2011 and 84 shifts in March of 2012. There are slower days than others: Monday,  
8 Tuesday days, and nights, and Sunday.

9  
10 **Driver Compensation**

11 5. As is traditional with the industry, we pay a percentage of the book or what's on the  
12 meter. The driver keeps all the tips for himself. After probation, gas is deducted, as well as the trip  
13 drop (money for each trip to the Taxicab Authority) we have a net book. We split that 50/50 with  
14 the driver. This helps ensure that the driver is out there trying to make money as opposed to going  
15 on personal errands. Because we book the least of the other cab companies, it has evolved that we  
16 attract a different type of cab driver.

17  
18 6. It seems most of our cab drivers are older than the rest of the industry. We have to  
19 be easier on cab drivers as far as pushing them to book because some of our cab drivers do not want  
20 to make too much money. In 2012, of our regular employee cab drivers (130) we have 54 drivers  
21 that are over 62 years old. I'd estimate that 50% of them draw social security. I say this based on  
22 comments from the drivers who tell me so and the older drivers that are monitoring their income.  
23 They know how much money they have made in a given time frame because they don't want to  
24 exceed a certain amount of money that will affect their draw of social security. The older drivers, in  
25 general, are very good drivers. They are easy on our cabs. We have fewer problems with them  
26 damaging the cabs or abusing the cars. Because they are easy drivers and good drivers, they  
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28

1 generally form relationships with locals who are regular cab users. The drivers over 62 have other  
2 lives. Because they provide service and take care of the passengers the taxicab passengers and  
3 riding public, they also become aware of when there's demand for cab service and when there is less  
4 demand in our area. We allow these drivers to use the cab for personal reasons while they are on  
5 shift. For example they will pick up a grandchild from school or take long lunches or breaks. They  
6 may have family issues or need to go to the doctor. Although they are supposed to be working and  
7 providing cab service to the traveling public while on shift, many of our drivers have learned when  
8 there is demand and we allow them to run personal errands while on shift. We do that because we  
9 need to keep the drivers in order to provide service to our certificated area.  
10

11 **7. Costs in 2012**

12 I'm also familiar and aware of the cost involved in putting a cab into service. We have to  
13 buy the car.. There are costs of turning the car into a cab. We have to follow a certain paint scheme.  
14 We install drive-cams, meters, lights, radios to make the cab road worthy and pass inspection by the  
15 Taxicab Authority. We also provide maintenance, oil, tires, tune-ups, wash, mechanics, supervisors,  
16 managers, dispatchers in the office as well as liability insurance and workers compensation  
17 insurance. I employ attorneys to help me comply with the law and my business. We also use  
18 accountants and other bookkeepers to comply with the requirements on the State of Nevada and  
19 record keeping. The average life of a cab is about 4-5 years, as limited by law. However we have  
20 instances where a cab is only "lived" a year or two because of a serious accident. We then have to  
21 replace the cab. Before we can break even, we have to invest all this money in the cab. Before we  
22 hand the keys to the driver to start his shift, if we are able to get out all of our cabs each day and  
23 cover both shifts each day (a 50/50 assumption) the cab driver has to generate \$58 to Deluxe Cab  
24 before we break even. I've explained how we split the book 50/50 after costs. That means that after  
25 the usual cost of gas, trip charge and airport fee the driver must book \$116 for us to break even. If  
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1 the driver books that amount, and keeps all of his tips, the driver gets \$58 plus his tips. Deluxe gets  
2 \$58, which is covering the costs of putting the cab into service. Deluxe makes nothing until a cab  
3 driver books over \$116.

4 8. The State of Nevada by certifying Deluxe has ordered us to provide reasonably  
5 adequate service. Sometimes that means picking up fares at night. There is work at night, but the  
6 work at night is limited in our area. We may need a couple cabs to work the wee hours of the week  
7 night, but we must put out cabs. There isn't much work, shifts are cut short. Mid week and the  
8 middle of the night, there is very little service demand.

9  
10 9. Herring

11 Mr. Herring worked for us on two occasions. The time spans when he worked as a cab driver  
12 for us are as follows:

13 October – December, 2012;

14 February – September, 2013.

15 Interestingly, from reviewing the trip sheets, Mr. Herring booked much less late in his second  
16 time. He didn't seem interested in taking radio calls, according to the trip sheets. We lost money on  
17 his shifts.

18 Recently Mr. Herring came to Deluxe Cab, again, seeking employment as a cab driver. This  
19 was approximately April or May of 2015. He was not hired.

20 We compensate our drivers in roughly the same formula as all the cab companies have done  
21 over the decades. Because we've invested money in the cab before the cab leaves the lot, and  
22 because we have little control over the cab driver while the cab is on the road, the percentage split of  
23 the book was a fair way of compensating drivers. The guys that hustled, made more money. The  
24 guys that were more relaxed in their approach to driving a cab, made less.

25 Since being told we must ensure minimum wage, we've had to take some cabs off the road  
26  
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28

1 and our service to the traveling public has slowed. We can't afford to put a cab out to ensure the cab  
2 driver makes minimum wage, if the cab driver is going to sit at a cab stand and make no effort to  
3 respond to radio calls.

#### 4 Union Cab Companies

5 All of the other companies in Las Vegas paid a percentage of the book to the driver in some  
6 form or another, which we follow. The manner of compensating drivers over the years was done  
7 through collective bargaining. Although we don't have unions at Deluxe Cab, some of the larger  
8 companies, have Unions and collective bargaining agreement. The unions would negotiate the terms  
9 of employment, including compensation. The smaller and medium companies had to pay in a  
10 similar manner to compete for drivers.

11 Frias Companies has a union. Frias is actually five cab companies: ANLV, Vegas Western,  
12 Union, Virgin Valley and Ace.

13 We also don't understand why we've followed the law, as we understood it and as noticed by  
14 Governor Sandoval and the Department of Labor but because of the 4-3 decision with the Supreme  
15 Court we are now subject to back pay, attorney fees, penalties and punitive damages and larger  
16 companies like Frias are not. They make much more money than we do per shift. We compensate  
17 our employees in the same manner they do, which was done by collective bargaining. Even though  
18 we don't have a union at our small cab company, we have been compensating employees at our  
19 company the same way that Frias has. We don't understand why Frias is exempt, while Deluxe is  
20 facing severe financial consequences.

#### 21 Deluxe Relied on the Governor and The Labor Department

22 We have routinely received through Intuit, a company we pay a fee for updated information  
23 from the labor commission. We post in the mechanic shop and in the driver's room posters which  
24 put all of our employees on notice of their rights under the law, including Nevada law on minimum  
25

1 wage. After the voter initiative, our notification by the labor commission on the posters we post  
2 showed the taxi drivers were exempt from the minimum wage requirements, including after the voter  
3 initiative. After the Nevada Supreme Court ruled in the Thomas case, 4 to 3, the posters we received  
4 from the labor commission (to this day), and signed by Governor Sandoval, states that cab drivers  
5 are exempt.  
6

7 Deluxe Cab has been defending this case and trying to comply with discovery since it was  
8 initiated in November of 2013. We have never tracked hours for cab drivers, except trying to limit  
9 them to no more than 12 hours per shift, as required by Nevada law. We keep track of the money  
10 they generate, the number of trips so that we can compensate the trip charge to the Taxicab  
11 Authority and pay the airport fees. We also have to take out money for taxes and calculate tips  
12 pursuant to the IRS. We report information as required by the Taxicab Authority and information  
13 money as required by the Internal Revenue Service and the Treasury Department.  
14

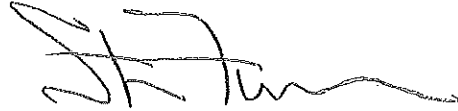
15 I understand the voter initiative didn't mention cab drivers. I understand the voter  
16 amendment exempts employees that are subject to collective bargaining agreements, like some of the  
17 larger cab companies. We don't understand why we should be defending this case and subject to  
18 back pay, attorney fees, penalties and punitive damages for complying with the law as noticed by our  
19 Governor and the labor commission. We also don't understand why we would be subject to back  
20 pay, penalties, attorney fees and punitive damages for a drivers who booked so little, that Deluxe  
21 Cab actually lost money. If we get all cars out and if we work double shifts, we must average \$58  
22 per shift before we make any money. If Mr. Herring booked \$80 on the meter, net, that means we  
23 made \$40, which puts us \$18 in the hole for that shift.  
24

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1 We don't understand why we would be subject to back pay, attorney fees, penalties, and  
2 punitive damages when Herring booked so little, that we lost money on that shift.

3 FURTHER YOUR AFFIANT SAYETH NAUGHT.  
4

5   
6

7  7-16-15

8 Notary Public in and for said  
9 County and State

Date

