

IN THE SUPREME COURT OF THE STATE OF NEVADA

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BOULDER CAB, INC.

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA, in and for the County of  
Clark; and THE HONORABLE  
TIMOTHY C. WILLIAMS, District  
Judge,

Respondents,

and

DAN HERRING,

Real Party in Interest.

Case No.: 68949

Clark County District Court

Electronically Filed  
Oct 20 2015 09:05 a.m.  
Tara K. Lindeman  
Clerk of Supreme Court

**WESTERN CAB COMPANY'S  
MOTION FOR LEAVE TO  
APPEAR AS AMICUS CURIAE IN  
SUPPORT OF PETITION FOR  
WRIT OF MANDAMUS AND  
SUPPORTING REVERSAL OF THE  
DISTRICT COURT'S DECISION**

Pursuant to NRAP 29(a) and 21(b)(3), Western Cab Company, a Nevada company doing business in Clark County, Nevada, moves for leave to appear as amicus curiae in support of Petitioner Boulder Cab, Inc.'s Petition for Writ of Mandamus filed on October 8, 2015. Like Petitioner, Western Cab seeks the Court's clarification that the decision in *Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518 (2014), applies prospectively from June 26, 2014, in its implied repeal of NRS 608.250(2). Additionally, Western Cab has discovered that the AFL-CIO drafted the Minimum Wage Amendment to level the playing field between unionized and non-unionized employers. Therefore, the Minimum Wage Amendment is preempted by the National Labor Relations Act.

At issue are practical and legal issues affecting Nevada employers and

employees with regard to the interpretation and applicability of the Minimum Wage Amendment, Nevada Const. Art. XV, sec. 16. Conflicts of interpretation as to how to reconcile the Minimum Wage Amendment with NRS Chapter 608, Nevada's Compensation, Wages and Hours chapter, immediately arose. State and federal trial courts have inconsistently applied two, three and four year statutes of limitations to claims for back wages. In addition, there was divergence among the same courts as to whether Nevada employees previously excepted from the minimum wage by NRS 608.250(2), *e.g.*, casual babysitters, certain domestic service employees, certain outside salespersons, certain agricultural employees, taxicab and limousine drivers, and certain persons with severe disabilities, were covered under the Minimum Wage Amendment. Questions as to the meaning of "health benefits" under the Amendment have also been raised in Nevada's state and federal trial courts.

On June 26, 2014, this Court addressed the conflict between the Minimum Wage Amendment and NRS 608.250(2), holding that the Minimum Wage Amendment had impliedly repealed NRS 608.250(2) and that employees previously excepted by statute from the minimum wage were now entitled to it under the Constitutional Amendment. *Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518 (2014).

*Thomas*, however, did not resolve other issues concerning the Minimum Wage Amendment's meaning, which issues have now been presented to this Court

in several proceedings, including but not limited to, *Hanks v. Briad Restaurant Group, LLC*, Case No. 68845, and *Kwayisi vs. Wendys of Las Vegas*, Case No. 68754, both presenting certified questions of the U.S. District Court Judge Gloria M. Navarro, which questions have been accepted by the Court for review (“Whether an employee must actually enroll in health benefits offered by an employer before the employer may pay that employee at the lower-tier wage under the Minimum Wage Amendment, Nev. Const. art. XV, §16?”); *MDC Restaurants LLC vs. District Court (Diaz)*, Case No. 68523 (presenting the same question as those certified in *Hanks* and *Kwayisi*); *MDC Restaurants LLC v. District Court (Diaz)*, Case No. 67631 (petitioning for a two-year statute of limitations); *Nevada Yellow Cab v. District Court (Thomas)*, Case No. 68975 (seeking clarification as to the prospective effect of the 2014 *Thomas* decision); and *Western Cab Co. v. District Court (Perera)*, Case No. 68796 (petitioning for a two-year statute of limitations).

In this matter, Petitioner Boulder Cab has raised the issue of whether the implied repeal of the exceptions of NRS 608.250(2) fairly dates from November 2006, when the Minimum Wage Amendment was adopted, or from June 26, 2014, when this Court published its decision in *Thomas* announcing by a 4/3 decision that the exceptions had been impliedly repealed. Like Boulder Cab, Western Cab faces serious issues of record-keeping and fundamental fairness as it has employees who were previously excepted from the minimum wage, others who

were not excepted, and has maintained its records in conformity with NRS 608.115 (“Records of wages must be maintained for a 2-year period following the entry of information in the record”).

While as a general proposition, changes in laws, whether enacted by the Legislature or adopted by constitutional amendment by popular referendum, operate prospectively and not retroactively, it is the position of Boulder Cab and proposed amicus curiae Western Cab that to hold the elimination of the exceptions of NRS 608.250(2) as dating from November 2006, is in effect an impermissible retroactive application of the law which was the subject of much dispute and not clarified until the *Thomas* decision was published in 2014. If prospective application of a new law, not clear upon its adoption, is required as fair, just and consistent with due process, then this Court’s definitive interpretation of the statute as impliedly repealing NRS 608.250(2) must run prospectively from June 26, 2014.

In addition, there are other infirmities with the Minimum Wage Amendment that may render the entire Amendment violative of federal law and preempted by it. The AFL-CIO who drafted the Minimum Wage Amendment intended for it to level the playing field between union and non-unionized employers. Therefore, the Minimum Wage Amendment violates the supremacy clause of the United States Constitution and is preempted by the National Labor Relations Act.

In conclusion, the issues raised by Boulder Cab’s Petition should be resolved

with all possible arguments presented to the Court. Western Cab therefore respectfully requests that the Court hear Boulder Cab's Petition and also grant Western Cab leave to file an amicus brief.

DATED: October 19, 2015

Respectfully submitted,

HEJMANOWSKI & McCREA LLC

A handwritten signature in cursive script, reading "Malani L. Kotchka", positioned above a horizontal line.

MALANI L. KOTCHKA

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Western Cab Company*

## **CERTIFICATE OF SERVICE**

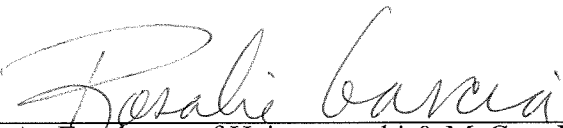
The undersigned does hereby certify that pursuant to NRAP 25(c), a true and correct copy of the forgoing **WESTERN CAB COMPANY'S MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS AND SUPPORTING REVERSAL OF THE DISTRICT COURT'S DECISION** was filed electronically with the Nevada Supreme Court Electronic Filing System, and a copy was served electronically on this 19th day of October, 2015, to the following:

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And a true and correct copy of the foregoing **WESTERN CAB COMPANY'S MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS AND SUPPORTING REVERSAL OF THE DISTRICT COURT'S DECISION** was served via first class, postage-paid U.S. Mail on this 19th day of October, 2015, to the following:

The Honorable Timothy C. Williams  
District Court Judge  
Eighth Judicial District Court of Nevada  
200 Lewis Avenue, #12D  
Las Vegas, NV 89101

  
An Employee of Hejmanowski & McCrea LLC