

IN THE SUPREME COURT OF THE STATE OF NEVADA

BOULDER CAB, INC.

Petitioners,

vs.

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

Respondents,

and

DAN HERRING,

Real Party in
Interest.

Case No. 68949

District Court Case

Dept. No. XVI

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**AMICUS CURIAE'S BRIEF IN SUPPORT OF PETITION FOR
WRIT OF MANDAMUS OR PROHIBITION**

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Nev. R. App. P. 26.1 DISCLOSURE

Pursuant to Nev. R. App. P. 26.1, counsel of record for Amicus Curiae certifies that the following are persons or entities described in NRAP 26.1(a) that must be disclosed.

1. Sun Cab, Inc. dba Nellis Cab Co. is a privately-held company and no publicly traded company owns 10% or more of Sun Cab., Inc.'s stock.

These representations are made so the judges of the Court may evaluate possible disqualification or recusal. A supplemental disclosure statement will be filed if there is any change to the required information provided therein.

Dated: November 2, 2015

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BRIEF OF AMICUS CURIAE

I. ISSUES DECIDED AND PRESENTED

Whether the District Court erred, abused its discretion and/or acted in a capricious manner by finding that this Court's decision in *Thomas v. Nevada Yellow Cab* should not be afforded purely prospective application when the decision created a new rule of law.

II. INTEREST OF THE AMICUS CURIAE

Sun Cab, Inc. dba Nellis Cab Co. (hereinafter "Nellis Cab" or "Amicus Curiae") seeks to participate as Amicus Curiae in the Writ proceeding in *Boulder Cab v. Dist. Ct. (Herring)*, Case No. 68949, District Court No. A-13-691551-C, Dept. XVI (the "Boulder Cab" action). Nellis Cab submits this brief pursuant to Nev. R. App. P. 29.

Nellis Cab owns and operates a taxi cab company in all of the greater Las Vegas area and is subject the minimum wage pursuant to Section 16 of Article XV of the Nevada Constitution (the "Minimum Wage Amendment" or "Amendment"). Nellis Cab is involved in a lawsuit in the Eighth Judicial District Court of Nevada and is confronting alleged violations of the Minimum Wage Amendment. Nellis Cab will undoubtedly raise the legal arguments and ramifications advanced by Petitioner in this Writ proceeding. The appropriate application of this Court's closely decided 4-3 ruling in *Thomas v. Nevada Yellow Cab* implicates Nellis

Cab's potential liability and discovery obligations. 130 Nev. Adv. Op. 52, 327 P.3d 518 (2014). These interests qualify proposed Amicus Curiae to participate in this case.

It is the position of the Amicus Curiae that the District Court erred in finding that the *Thomas v. Nevada Yellow Cab* decision should be afforded retroactive effect. Therefore, the Amicus Curiae respectfully submits this Amicus Brief in support of Petitioner's position that because of *Thomas v. Nevada Yellow Cab's* novel decision, principles of equity dictate *Thomas v. Nevada Yellow Cab* should only be applied prospectively.

III. INTRODUCTION

Taxicab drivers have filed numerous class action lawsuits pursuant to the Minimum Wage Amendment against Nevada taxicab companies alleging violations of Nevada's minimum wage. In this matter, and the litigation where the Amicus Curiae is a party, the claimants maintain that taxicab companies were required to pay drivers the minimum wage since the ratification of the Minimum Wage Amendment in 2006, despite NRS 608.250(2)'s long-standing exemption of taxicab drivers from the minimum wage. It is the position of the Amicus Curiae that the District Court's order finding that *Thomas v. Nevada Yellow Cab* should be applied retroactively is incorrect and, instead, the decision should be afforded prospective application only.

For nearly fifty years before the *Thomas v. Nevada Yellow Cab* decision, taxicab companies relied on the statutory scheme in Chapter 608 of the Nevada Revised Statutes to comply with Nevada's minimum wage laws. In the Chapter, NRS 608.250(2) exempted taxicab and limousine drivers from any entitlement to the State's minimum wage. Following the passage of the Minimum Wage Amendment, however, questions arose regarding the viability of Nevada's statutory wage and hour laws. The Minimum Wage Amendment did not reference Chapter 608's statutory scheme and did not express any abrogation of the same. Accordingly, taxicab companies like Nellis Cab continued to comport with Nevada's long-standing statutory laws that exempted taxicab drivers from Nevada's minimum wage. Moreover, Nevada's Office of the Labor Commissioner, either believing that NRS 608.250(2)'s exemptions were still binding or being uncertain of the state of the law, failed to take action on constitutional wage claims until after the Court's decision in *Thomas v. Nevada Yellow Cab*.

Eight years after the ratification of the Amendment, this Court found in *Thomas v. Nevada Yellow Cab*, that NRS 608.250(2)'s well-established statutory exemptions were "irreconcilably repugnant" with the Amendment such that both could not stand. For the first time and in the face of a contrary ruling reconciling the Amendment and Chapter 608's exemptions, this Court ruled that the Minimum

Wage Amendment impliedly repealed NRS 608.250(2).

A full consideration of the equities cannot ignore the significant inequity that will result from *Thomas v. Nevada Yellow Cab's* application retroactively. Therefore, in accordance with this Court's precedent, the Court should impart *Thomas v. Nevada Yellow Cab* with only prospective effect.

IV. FACTUAL BACKGROUND

Amicus Curiae adopt the Statement of Facts set forth in Petitioner's Petition for Writ of Mandamus. In addition, Nellis Cab provides the factual background below.

A. Taxi Cab Companies Like Nellis Cab Acted In Accordance With NRS 608.250's Mandate Since 1965.

Nevada Wage and Hour Law, codified in Chapter 608 of the Nevada Revised Statutes, has governed minimum wage for employees in Nevada since 1965. For over four decades, the Labor Commissioner was entrusted with establishing the minimum wage for employees in private employment within the State of Nevada. NRS 608.250(1). Moreover, under the statutory scheme, taxicab and limousine drivers were excluded from any entitlement to this minimum wage. NRS 608.250(2)(e).

Before the decision in *Thomas v. Nevada Yellow Cab*, there was no indication that NRS 608.250(2)'s statutory exemptions were repealed. While the Nevada voters ratified the Minimum Wage Amendment in 2006, thereby

increasing the minimum wage, the Amendment did not address nor allude to the long-standing statutes in Chapter 608. Taxicab companies like Nellis Cab¹ had no reason to believe or deduce that the Amendment had repealed Chapter 608's statutory exemptions, expressly or otherwise. The taxicab companies continued to comply with the established statutory exemptions.

The taxicab companies' compliance was further affirmed by the United States District Court, District of Nevada, in *Lucas v. Bell Trans*, 2009 WL 2424557, *5-6 (D. Nev. June 24, 2009). As the first case to evaluate the Minimum Wage Amendment and its interplay with NRS 608.250, the *Lucas* Court ruled that the Amendment and NRS 608.250's exceptions could "happily co-exist." *Id.*, at *7. The Court reasoned that because the Amendment made no reference to NRS 608.250 and its definition of "employee" is not in conflict with NRS 608.250, the Amendment did not repeal any statutory exceptions. *Id.* The Court also explained that the focus of the Amendment was the minimum wage, not a repeal or amendment of NRS 608.250 and its exceptions. *Id.* Accordingly, the Court upheld a taxicab company's compliance with NRS 608.250(2). Taxicab companies, once more, had no reason to believe or deduce that NRS 608.250(2) was repealed by the Minimum Wage Amendment.² The companies continued to act in accordance with

¹ Through the instant Petition, an analogous Petition in Case No. A661726, and the supporting Amici Curiae, it is apparent that various taxicab companies experienced comparable reliance.

² The *Lucas* Court even explained that the Nevada Attorney General's opinion

Nevada's long-standing statutory law. Indeed, if a taxicab company or any other employer for that matter, went to the Nevada Revised Statutes to see if cab drivers or other positions were exempt from the minimum wage, the company would have read under NRS 608.250(2) that cab drivers were exempt from the minimum wage.

Notably, Nevada's Office of the Labor Commissioner took no action on constitutional wage claims lodged against Nellis Cab. More specifically, one of the claimants (Neal Golden) pursuing the class action lawsuit against Nellis Cab pursuant to the Minimum Wage Amendment, filed a complaint with the Labor Commissioner on or about August 2010. Amicus' Appendix Vol. I, 001-002. In accordance with the claimant's representations, Nevada's Office of the Labor Commissioner took no action on his complaint to collect the minimum wage he believed he was owed under the Minimum Wage Amendment. *Id.* Accordingly, the Office of the Labor Commissioner either believing that NRS 608.250(2)'s exemptions remained binding or being uncertain of the state of the law, led companies like Nellis Cab to believe that their continued compliance with NRS 608.250(2) was proper.

B. Thomas v. Nevada Yellow Cab Found An Implied Repealed Of
NRS 608.250(2) By the Minimum Wage Amendment For The First
Time.

regarding NRS 608.250(2), 05-04 Op. Nev. Att'y. Gen. 7 (Mar. 2, 2005), did not carry any weight because it was premised on inconsistent and unreasonable presumptions. *Id.*, at *6-*8.

In *Thomas v. Nevada Yellow Cab*, taxicab drivers brought a class action against a taxicab company arguing that they had not been paid pursuant to constitutional minimum wage requirements during the course of their employment. 327 P.3d. at 519. The taxicab drivers asserted that the Minimum Wage Amendment, by setting out some exceptions to minimum wage, supplanted the exceptions listed in NRS 608.250(2). *Id.*, at 520. This Court contrasted the Amendment with NRS 608.250(2) and noted that the Amendment imposes a mandatory minimum wage pertaining to all employees, who are defined for purposes of the Amendment as any persons who are employed by an employer, except for those employees under the age of 18, employees employed by nonprofits for after-school or summer work, and trainees working for no longer than 90 days. Nev. Const. Art. 15, § 16(C). In contrast, NRS 608.250(2), which was enacted prior to the Minimum Wage Amendment, excludes six classes of employees from its minimum wage mandate, including taxicab drivers. *Thomas*, 327 P.3d at 521. Thus, in a 4-3 decision, this Court reasoned that because the Amendment created a “broad definition of employee and listed very specific exemptions necessarily and directly in conflict with the legislative exception for taxicab drivers established by NRS 608.250(2)(e),” the two are “irreconcilably repugnant,” such that “both cannot stand.” *Id.*, at 521 (quoting *Mengelkamp v. List*, 88 Nev. 542, 545–46, 501 P.2d 1032, 1034 (1972) and *W. Realty Co. v. City*

of *Reno*, 63 Nev. 330, 344, 172 P.2d 158, 165 (1946)). Based on such reasoning, the Court ruled that NRS 608.250(2) is impliedly repealed by the Minimum Wage Amendment. *Thomas*, 327 P.3d at 521. Significantly, *Thomas v. Nevada Yellow Cab* was the primary decision to find an implied repeal of NRS 608.250(2) by the Minimum Wage Amendment. The decision was rendered eight years after the ratification of the Minimum Wage Amendment.

V. ARGUMENT

Contrary to the District Court's ruling, *Thomas v. Nevada Yellow Cab* set forth a new rule of law that unsettled a long-standing statutory scheme. Because of the unforeseen expulsion of NRS 608.250(2), equitable principles warrant that the Court's decision in *Thomas v. Nevada Yellow Cab* be applied purely prospectively.

A. The Nevada Supreme Court's Decision In *Thomas v. Nevada Yellow Cab* Established A New Rule of Law In The State of Nevada.

The Nevada Supreme Court has explained that there is no bright-line rule for determining whether a judicial decision sets forth a new rule of law. *Bejarano v. State*, 122 Nev. 1066, 1075, 146 P.3d 265, 271(2006). However, the Court has consulted certain guidelines for determining when a rule is new. For example, a new rule of law is not generally created when a decision clarifies an existing rule or applies an established constitutional principle to a case and the case is akin to

those considered in prior case law. *Coldwell v. State*, 118 Nev. 807, 819, 59 P.3d 463, 472 (2002). Conversely, a decision creates a new rule of law when it overrules precedent or disapproves of a practice sanctioned in prior cases, or overturns a longstanding practice uniformly approved by lower courts. *See Pellegrini v. State*, 117 Nev. 860, 885, 34 P.3d 519, 535-36 (2001). In the civil context, a new rule of law is also created when an issue of first impression whose resolution was not clearly foreshadowed is decided. *Breithaupt v. USAA Prop. & Cas. Ins. Co.*, 110 Nev. 31, 35, 867 P.2d 402,405 (1994) (citing *Chevron Oil Co. v. Huson*, 404 U.S. 97, 106-07 (1971)).

For the first time in *Thomas v. Nevada Yellow Cab*, the Court evaluated the Minimum Wage Amendment alongside NRS 608.250's exemptions. Before *Thomas v. Nevada Yellow Cab* was brought on appeal, the only decision addressing NRS 608.250's exemptions and the Amendment was *Lucas v. Bell Trans*, 2009 WL 2424557 (D. Nev. June 24, 2009). *Lucas v. Bell Trans* had no binding precedential value upon Nevada state courts. *See generally, Custom Cabinet Factory of N.Y. v. Dist. Ct.*, 119 Nev. 51, 54, 62 P.3d 741, 742-43 (2003), *overruled on other grounds by Winston Products Co. v. DeBoer*, 122 Nev. 517, 134 P.3d 726 (2006). It is, therefore, undisputed that the specific issue presented in *Thomas v. Nevada Yellow Cab* was one of first impression before the Court.

Thomas v. Nevada Yellow Cab was also not clearly foreshadowed.

Preliminarily, the question presented in *Thomas v. Nevada Yellow Cab*, was brought before the Court in 2012—six years after the Amendment’s ratification. The Court reached its decision two years later in 2014—eight years after the Amendment’s ratification. From 2006 through 2012, the only court decision to examine the Amendment alongside NRS 608.250’s exemptions was a Nevada federal district court in *Lucas v. Bell Trans*, 2009 WL 2424557 (D. Nev. June 24, 2009). As provided *supra*, the *Lucas* Court unequivocally declared the Amendment to be in harmony with NRS 608.250’s exceptions. *Id.* at *7. The Court did not find any repugnancy between the Minimum Wage Amendment’s definition of “employee” and NRS 608.250’s associated definition. Therefore, there was no authority to raise doubt in the mind of taxicab companies that compliance with Chapter 608’s complete statutory scheme ran afoul of the Minimum Wage Amendment. In light of NRS 608.250’s long-standing statutory exemptions with no indication of repeal and the lone precedent set in *Lucas*, it becomes apparent that *Thomas v. Nevada Yellow Cab* was not clearly foreshadowed by taxicab companies, like *Amicus Curiae*. The Court invalidated NRS 608.250’s exemptions in a way that was inconsistent with how the statute had long been applied before and after the Minimum Wage Amendment’s passage. Accordingly, the Court’s analysis in *Thomas v. Nevada Yellow Cab* was new and not clearly foreshadowed. There is no reasonable basis to conclude otherwise.

**B. Equitable Principles Dictate That The Court's Ruling In
Thomas v. Nevada Yellow Cab Should Only Apply Prospectively.**

As a general rule, judicial decisions are retroactive. *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 535 (1991). However, a court in a civil case may apply a decision purely prospectively, binding neither the parties before it nor similarly situated parties in other pending cases. *See e.g., Breithaupt*, 110 Nev. at 35, 867 P.2d at 405. To determine whether a new rule of law should be limited to prospective application, Nevada courts are to consider three factors:

(1) the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed;

(2) the court must “weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation;” and

(3) courts consider whether retroactive application “could produce substantial inequitable results.”

Id. Each factor favors prospective application of *Thomas v. Nevada Yellow Cab*.

1. The Court Ascertained A New, Unforeseen Principle Of Law.

The first factor in *Breithaupt* provides that a decision is to apply prospectively if it establishes “a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed.” *Id.* This first factor seeks to identify judicial decisions that espouse a new rule of law which may

unjustly take litigants by surprise.

As further explained above, *Thomas v. Nevada Yellow Cab*'s abrogation of NRS 608.250(2) satisfies this factor. The Nevada Supreme Court, in an issue of first impression, repealed long-standing statutory exemptions in finding they were in conflict with the Minimum Wage Amendment. With no warning of repeal, the Court abrogated the well-established exemptions and fundamentally changed the wage laws for taxicab companies. Accordingly, the first factor in *Breithaupt* weighs in favor of prospective application.

2. Retroactive Application Will Not Advance NRS 608.250(2)'s Repeal In A Meritorious Manner.

The second factor requires this Court to “weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation.” *Breithaupt*, 110 Nev. at 35, 867 P.2d at 405. This factor aims to evaluate the background of the decision to determine if retroactive application will advance or hinder the determination.

Retroactive application of *Thomas v. Nevada Yellow Cab* will not further the decision's purpose in an advantageous manner. For nearly half a century, even after passage of the Minimum Wage Amendment, companies looked to Chapter 608 of the Nevada Revised Statutes to comply with the State's wage hour and

laws. Taxicab companies like Nellis Cab would reference NRS 608.250 and read the following:

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 federal law, unless the Labor Commissioner 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 days of agricultural labor in any calendar quarter of the preceding calendar year.
- (e) Taxicab and limousine drivers.***
- (f) Persons with severe disabilities 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.

(Emphasis added). A plain reading of NRS 608.250 made it abundantly clear that taxicab and limousine drivers were excluded from the right to the State's minimum wage. NRS 608.250(2) remained part of Chapter 608's statutory scheme until 2014 when the Court abrogated NRS 608.250(2) in *Thomas v. Nevada Yellow Cab*. Until such time, taxicab companies could continue to reference NRS 608.250(2) and trust that their practices, exempting taxicab drivers from the minimum wage, were in compliance with Nevada law.

The Court's decision in *Thomas v. Nevada Yellow Cab* represented a fundamental shift in law and understanding. The decision, for the first time,

identified a repeal of NRS 608.250(2) by the Minimum Wage Amendment. The Minimum Wage Amendment, however, made no mention of NRS 608.250 or Chapter 608's statutory scheme to suggest repeal. Nev. Const. art. 15, § 16(C). Moreover, the first Nevada case to evaluate the Minimum Wage Amendment and its interplay with NRS 608.250 affirmed that the Amendment and NRS 608.250's exceptions were in accord with one another. *Lucas v. Bell Trans*, 2009 WL 2424557, *7 (D. Nev. June 24, 2009). Therefore, until *Thomas v. Nevada Yellow Cab*, NRS 608.250(2) remained good law.

While *Thomas v. Nevada Yellow Cab*'s purpose and effect was to elucidate the scope of the Minimum Wage Amendment, applying the decision solely prospectively will ensure compliance with that principle and curtail litigation predicated on a formerly sound, statutory exception. *Indeed, to apply the decision retroactively will only punish taxicab companies for lacking the foresight and legal intellect to reach the Court's deduction of implied repeal—a deduction that even three Justices of this Court disagreed with in a 4-3 decision.* It is, thus, worth underscoring that *Thomas v. Nevada Yellow Cab* verged on being a very different decision today. In sum, a purely prospective application of *Thomas v. Nevada Yellow Cab* will preserve compliance with the Minimum Wage Amendment, as elucidated by the Court, and properly take into account the existence of a well-established statute before the determination of its unconstitutionality. Accordingly,

the second factor in *Breithaupt* also weighs in favor of prospective application.

3. Retroactive Application Will Result In Substantial Inequitable Results To Taxicab Companies Like Nellis Cab.

The third factor requires this Court to inquire whether the decision "could produce substantial inequitable results if applied retroactively." *Breithaupt*, 110 Nev. at 35, 867 P.2d at 405. Consistent with *Breithaupt*, the United States Supreme Court has found that inequities can result from strict application of a rule and that such inequities should be given weighty consideration. See, *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 374 (1940) ("[t]he actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration."); *Landgraf v. USI Film Prods.*, 511 U.S. 244, 265-66 (1994) ("Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted."). A parties' exposure to significant liability is a recognized inequity tipping the scales in favor of prospective application. See e.g., *Glazner v. Glazner*, 347 F.3d 1212, 1220 (11th Cir. 2003) ("If this were truly a situation where the class of persons affected by the new rule would suddenly face a strong likelihood of liability when they faced no possibility of liability before, we would be inclined

to view the equities as weighing heavily in favor of pure prospective application.").

Applying the above reasoning to the matter at bar, it is evident that a retroactive application of *Thomas v. Nevada Yellow Cab* will cause substantial inequitable results for taxicab companies. The primary inequity in applying the decision in *Thomas v. Nevada Yellow Cab* retroactively is the creation of liability where none previously existed. Pursuant to NRS 608.250, taxicab and limousine drivers were openly exempted from any entitlement to the State's minimum wage. Many taxicab companies based their business decisions and practices around this exemption and employed taxicab drivers in conformity with the same. Specifically, taxicab companies, like Amicus Curiae, relied upon the clear statutory exemption and did not compensate taxicab drivers pursuant to the State's constitutional minimum wage—that is, until the Court's decision in *Thomas v. Nevada Yellow Cab*. Nellis Cab equally relied on the Office of the Labor Commissioner's failure to pursue constitutional wage claims. The Office of the Labor Commissioner either believing that continued compliance with NRS 608.250(2) was appropriate or being uncertain of the state of the law, did not investigate complaints against Nellis Cab concerning the Minimum Wage Amendment violations. *See e.g.*, Amicus' Appendix Vol. I, 001-002. A retroactive holding by this Court now, that employers, like Nellis Cab, should have compensated taxicab drivers with minimum wage payments since the Minimum

Wage Amendment's ratification, would unjustly penalize companies who lacked the opportunity to know what the law was and to conform their conduct accordingly. As the United States Supreme Court declared, "[t]he past cannot always be erased by a new judicial declaration." *Chicot County Drainage Dist.*, 308 U.S. at 374. Liability should not fall on companies whom lacked the opportunity to know what the law was until this Court's decision and to conform their conduct accordingly.

Furthermore, retroactive application of *Thomas v. Nevada Yellow Cab* carries potentially vast and unpredictable liability which weighs in favor of prospective application. In this regard, the Minimum Wage Amendment provides:

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.***

Nev. Const. art. 15, § 16(B) (Emphasis added). Based on the above language, taxicab companies are facing arguments as to the meaning of "all remedies available under law or equity" and the potential entitlement claimants may have under the Minimum Wage Amendment. *Id.*

Emphatically, retroactive application of *Thomas v. Nevada Yellow Cab* could jeopardize the financial and operational standing of various taxicab

businesses. A review of the Eighth Judicial District Court docket, alone, illustrates the mass litigation initiated against taxicab companies based on violations of the Minimum Wage Amendment and, hence, the innumerable liability various companies may encounter.³ Companies should not be subject to such egregious harm for guilelessly relying on long-standing statutory exemptions that remained good law before *Thomas v. Nevada Yellow Cab*.

Overall, retrospective application of *Thomas v. Nevada Yellow Cab* will negate any semblance of equity considering taxicab companies relied on long-standing statutory authority to determine the wage owed to taxicab drivers. It is inequitable to now find that these employers should have known how to interpret the Minimum Wage Amendment against long-standing Nevada statutes, prior to *Thomas v. Nevada Yellow Cab*. Fairness dictates that the decision in *Thomas v. Nevada Yellow Cab*'s should purely apply prospectively; the third and final factor in *Breithaupt* correspondingly weighs in favor of prospective application.

VI. CONCLUSION

While judicial decisions are generally applied retroactively, equitable principles may command a purely prospective application. In applying those

³ *Christopher Thomas v. Nevada Yellow Cab Co.* – Case No.: A-12-661726-C; *Melasky v. Lucky Cab Co.* – Case No.: A-12-660700-C; *Barbara Gilmore v. Desert Cab, Inc.* – Case No.: A-12-668502-C; *Michael Murray v. A Cab Taxi Service, LLC* – Case No. A-12-669926-C; *Neal Golden v. Sun Cab, Inc.* – Case No.: A-13-678109-C; *Dan Herring v. Boulder Cab, Inc.* – Case No.: A-13-691551; and *Laksiri Perera v. Western Cab Co.* – Case No.: A-14-707425-C.

equitable principles to the instant matter, it is apparent that *Thomas v. Nevada Yellow Cab* is a judicial decision compelling prospective application. Therefore, Amicus Curiae respectfully request this Court grant Boulder Cab's petition and direct the District Court to enter an order that *Thomas v. Nevada Yellow Cab* is to be applied prospectively in conformity with equity principles.

Dated: November 2, 2015.

Respectfully submitted,

/s/ Montgomery Y. Paek, Esq.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief 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 typeface using Microsoft Word 2010 in 14 point font size and Times New Roman.

I further certify that this brief 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 either:

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Finally, I hereby certify that I have read this appellate brief, 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 brief 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.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: November 2, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 3960 Howard Hughes Parkway, Suite 300, Las Vegas, Nevada 89109-0920. On November 2, 2015, the following document was served on the following:

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Executed on November 2, 2015 at Las Vegas, Nevada.

/s/ Erin J. Melwak

Erin J. Melwak