

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3
4 BOULDER CAB, INC.,

5 Petitioner,

6 vs.

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

11 Respondents,

12 and

13 DAN HERRING,

14 Real Party in Interest,
15

Electronically Filed
Jan 22 2016 02:34 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case No.: 68949

Dist. Ct. No.: A-13-691551-C
Dept. No. XVI

**MOTION BY PROGRESSIVE
LEADERSHIP ALLIANCE OF
NEVADA FOR LEAVE TO FILE
AMICUS CURIAE BRIEF IN
SUPPORT OF REAL PARTY IN
INTEREST'S ANSWERING BRIEF**

16 Prospective *amicus curiae* the Progressive Leadership Alliance of Nevada
17 (“PLAN”) hereby files a motion for leave to file its brief in support of Real Parties
18 in Interest’s answering brief, and in support of denying the present writ petition.
19 PLAN seeks leave to file an amicus brief to raise legal arguments and highlight the
20 ramifications of the arguments advanced by Petitioners.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 **I. THE COURT SHOULD GRANT LEAVE TO FILE AN AMICUS**
2 **BRIEF**

3 This Court has the discretion to permit a non-party to file an amicus brief.
4 *See Nev. R. App. P. 29(a), 21(b)(3).* Courts “welcome amicus briefs from non-
5 parties concerning legal issues that have potential ramifications beyond the parties
6 directly involved or if the amicus has unique information or perspective that can
7 help the court beyond the help that the lawyers for the parties are able to provide.”
8 *NVG Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067
9 (N.D. Cal. 2005). PLAN offers its experience in advocating economic justice to
10 add additional points and authorities reinforcing the argument that equitable
11 principles require a retroactive application of this Court’s decision in *Thomas v.*
12 *Nevada Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518 (2014).

13 **A. PLAN has a direct interest in this writ petition**

14 PLAN was founded in 1994 to advocate for, among other things, economic
15 justice for low-wage workers and the working poor in Nevada. PLAN played in
16 role in the passage of the Minimum Wage Amendment ultimately at issue in this
17 writ petition, in 2004 and 2006. It currently is part of a coalition responsible for a
18 2016 ballot initiative to amend and improve Nev. Const. art. XV, sec. 16. PLAN
19 members also regularly testify before the Nevada State Legislature on matters
20 regarding the minimum wage, on behalf of minimum wage workers and the
21 economically-disadvantaged. PLAN is keenly aware of the remedial, pro-employee
22 intent of the Minimum Wage Amendment, and recognizes that rulings regarding
23 the Amendment potentially affect tens, if not hundreds, of thousands of minimum
24 wage workers in Nevada.

25 Corporations, like the taxicab companies that are parties to this litigation and
26 the *amici* who filed to support them, enjoy the resources and organizational
27 structures required to file such briefs and engage in such litigation. Minimum wage

workers, as individuals or even as a group, do not benefit from the same profit margins, legal budgets, professional associations, or organization. By virtue of earning the absolute lowest wage allowable by law, minimum wage workers—in this case workers who have been deprived of any wage at all, minimum or otherwise—rely on groups such as PLAN to advocate on their behalf. Due to its long-term engagement in wage issues in Nevada, and in particular to its direct involvement in the passage of the Minimum Wage Amendment, PLAN is uniquely qualified and able to provide such advocacy on this issue. These direct interests qualify proposed *amicus curiae* to participate in this matter.

B. An Amicus Brief In Support Of Real Party In Interest Is Desirable For The Court To Consider All Relevant Points And Authorities Concerning The Issue In The Writ Petition

Several taxicab companies, including the parties and *amici*, have now weighed in on this writ petition. Each one, in turn, bemoans Real Parties in Interest’s position “that the defendant taxicab companies were required to pay drivers the minimum wage since the ratification of the Minimum Wage Amendment in 2006[.]” *See, e.g.,* Amici Sun Cab, Inc.’s Motion for Leave at 3. Despite the axiomatic nature of this position—that taxicab companies were required to pay the minimum wage ever since the state’s constitution required them to pay the minimum wage—the taxicab companies find this wholly objectionable. But the taxicab companies wagered, and lost, on a risky defense to liability—thinking, that the Amendment did not apply to them because of previously-valid statutory exemptions. This Court should not now pardon the taxicab companies for their lost wager. That bet was made at the expense of cab-driving employees, and now the bill has come due.

PLAN also maintains that *Thomas* was not “landmark” decision. This Court did not reverse itself or any longstanding precedent in its *Thomas* opinion; neither did it break with other jurisdictions in its ruling. The voters, by overwhelming

1 majorities, recast and replaced Nevada's statutory minimum wage scheme by
2 enacting the Minimum Wage Amendment to the state constitution. The natural
3 outcome, as this Court ultimately held in *Thomas*, is exactly what happened: the
4 old statutes do not control anymore, especially in instances of obvious conflict (as
5 here in the case of previous and newly-enacted exceptions to minimum wage
6 coverage). The logic and decision of the majority in *Thomas* were both foreseeable
7 and expected. The taxicab companies cannot now act as if they could not have
8 been expected to consider the possibility that their weak and self-serving
9 interpretation of the interplay between N.R.S. 608.250 and the Minimum Wage
10 Amendment would crumble upon judicial examination.

11 **II. CONCLUSION**

12 An *amicus curiae* brief on behalf of PLAN is both useful and timely given
13 the importance of the issue herein to low-wage workers. Accordingly, this Court
14 should give leave to file the *amicus curiae* brief on behalf of PLAN.

15 Respectfully submitted this 22nd day of January, 2016.

17 **WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP**

18 By: /s/ Bradley Schrager, Esq.

19 DON SPRINGMEYER, ESQ. (NV Bar No. 1021)

20 dspringmeyer@wrslawyers.com

21 BRADLEY SCHRAGER, ESQ. (NV Bar No. 10217)

22 bschrager@wrslawyers.com

23 3556 E. Russell Road, 2nd Floor

24 Las Vegas, Nevada 89120-2234

25 (702) 341-5200 / Fax: (702) 341-5300

26 *Attorneys for prospective amicus curiae Progressive*
27 *Leadership Alliance of Nevada*

1 **CERTIFICATE OF SERVICE**

2 **STATE OF NEVADA, COUNTY OF CLARK**

3 At the time of service, I was over 18 years of age and not a party to this
4 action. I am employed in the County of Clark, State of Nevada My business
address is 3556 E. Russell Road, 2nd Floor, Las Vegas, Nevada 89120-2234.

5 On January 22, 2016, I served true copies of the following document(s)
6 described as **MOTION BY PROGRESSIVE LEADERSHIP ALLIANCE OF**
7 **NEVADA FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT**
OF REAL PARTY IN INTEREST'S ANSWERING BRIEF on the interested
parties in this action as follows:

8 **BY CM/ECF:** Pursuant to N.E.F.R., the above-referenced document was
9 electronically filed and served upon the parties listed below through the Court's
Case Management and Electronic Case Filing (CM/ECF) system.

10 I declare under penalty of perjury under the laws of the State of Nevada that
11 the foregoing is true and correct.

12 Executed on January 22, 2016, at Las Vegas, Nevada.

13 By: /s/ Dannielle R. Fresquez

14 Dannielle R. Fresquez, an Employee of
15 WOLF, RIFKIN, SHAPIRO,
16 SCHULMAN & RABKIN, LLP
17
18
19
20
21
22
23
24
25
26
27