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Real party in interest

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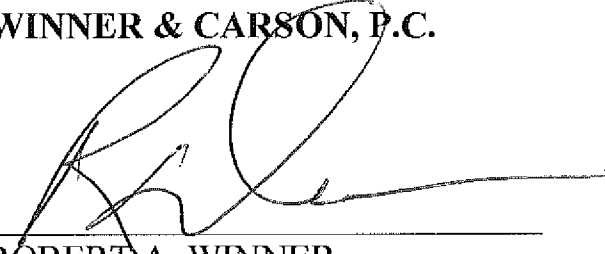
1 **N.R.A.P Rule 26.1 Disclosure**

2 Pursuant to NRAP 26.1 the undersigned counsel of record certifies that  
3  
4 Petitioner Boulder Cab Inc., has no parent corporation and no publicly held  
5 company owned 10 percent or more of its stock.

6 The undersigned counsel of record further certifies that he is the only  
7  
8 attorney that has appeared for Petitioner Boulder Cab, Inc. in the proceedings in  
9 District Court and in this court and that he has appeared since January 8, 2014  
10 through the law firm of Winner and Carson.

11  
12 DATED this 1 day of July, 2016.

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

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16   
17 ROBERT A. WINNER  
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21 *Attorney for Petitioner*  
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**TABLE OF AUTHORITIES**

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1 I.

2 STATEMENT OF REASONING

3 Pursuant to NRAP 27, Boulder Cab, Inc. (Boulder) moves this Court to  
4 supplement Boulder's briefing and arguments before the Court. Boulder had  
5 hoped to address this point at oral argument, which Boulder briefly made in its  
6 points and authorities. However, at oral argument, counsel for Boulder spent most,  
7 if not all, of the time responding to Justices' questions. Boulder feels compelled to  
8 underscore this point for this Court's consideration in this case, and other pending  
9 writs before the Court.  
10

11  
12 A. The Minimum Wage Amendment was Never Originally Intended to  
13 be Part of the Constitution.  
14

15 The language in the Minimum Wage Amendment (MWA) makes it clear  
16 that the amendment was likely originally drafted as a Bill for the Legislature's  
17 consideration.  
18

19 The last paragraph of the MWA contains the following language:  
20

21 "If any provision of this section is declared illegal, invalid or inoperative, in  
22 whole or in part, by the final decision of any court of competent jurisdiction, the  
23 remaining provisions and all portions not declared illegal, invalid or inoperative  
24 shall remain in full force or effect, and no such determination shall invalidate the  
25 remaining sections or portions of the sections of this section." Nevada  
26 Constitution, Article 15, Section 16.  
27  
28

1 The language above-cited, and appearing in the last paragraph of the  
2 amendment, is common in the legal community. Most attorneys call this a  
3 severability clause. Language very similar to this is often found in contracts, and  
4 occasionally in statutes. A severability clause appearing in Nevada's Constitution  
5 is puzzling.  
6

7  
8 Rhetorically, one asks:

9 How can a court declare part of the Constitution, unconstitutional (invalid)?  
10 The presence of such a puzzling clause in our Constitution suggests it was likely  
11 originally presented to the Legislature as a Bill. It is further likely the Legislature  
12 failed to act on the bill and failed to put it to vote. Procedurally, the exact language  
13 of the bill could be put to the voters as a Constitutional Amendment, if enough  
14 signatures were garnered. It was legislative inertia that spawned the MWA.  
15  
16 Boulder suggests that is probably what happened.  
17

18  
19 B. The MWA Empowers this Court.

20 The language of the MWA, our Constitution, empowers this court to act.  
21 The language in the amendment states that a court of competent jurisdiction can  
22 declare a portion of the amendment invalid or inoperable. Inoperable clearly  
23 means that it doesn't work in the real world.  
24

25 In considering Boulder's writ for prospective application, this court could  
26 decide retroactive is inoperable, under the circumstances. The consequences of a  
27  
28

1 repeal of the statutory exceptions had substantial inequities and we showed clear  
2 reliance on the past precedent. The MWA did not clearly and obviously repeal the  
3 statute.  
4

5 More importantly, there are other writs currently pending before the Court.  
6 There will likely be more. Boulder suggests the inequities that flowed from the  
7 Thomas decision were in part because this Court did not have any evidence or  
8 record before it as to the inequitable consequences of declaring an implied repeal,  
9 retroactive.  
10

11  
12 Boulder's counsel has read the Hancock decision, which Boulder  
13 understands is currently before the Court to determine, in part, what constitutes a  
14 qualified plan under the Amendment.  
15

16 Boulder suggests the same problem exists for this Court in Hancock as  
17 existed in Thomas, examining only the language of the MWA and the language of  
18 regulations drafted by the Labor Commissioner. The notion of qualified plan under  
19 the MWA must be interpreted with an eye on its operability/inoperability.  
20

21  
22 In the real world, this court should know how long it takes for an employer  
23 to obtain health insurance on an employee, even if the employee wanted insurance  
24 on his date of hire. By the very language of the Amendment, empowering this  
25 Court to determine if a strict construction of the language is inoperable or  
26 unworkable, permits this Court to consider real world factors when considering the  
27  
28

1 language of the Constitutional Amendment.

2       The MWA also exempts from minimum wage, "A trainee for a period not  
3 longer than 90 days."  
4

5       Boulder, like many employers, has probationary periods for new employees.  
6 It would be helpful for this Court to allow a probationary period up to 90 days to  
7 be exempt from the amendment language in order for the parties to realistically get  
8 health insurance in place. This is especially so in an industry with such high  
9 turnover.  
10

11  
12       Declaring an employee is entitled to a higher minimum wage for the first 90  
13 days is not practical. After insurance is placed, the employee starts paying his  
14 premium and starts making less per hour? Consider work place moral under this  
15 scenario, and ask: Is this application of the MWA inoperable? Boulder suggests it  
16 is inoperable, and that this Court has been empowered by the Constitution to  
17 review real world factors in trying to apply the language of the Amendment which  
18 raised the minimum wage.  
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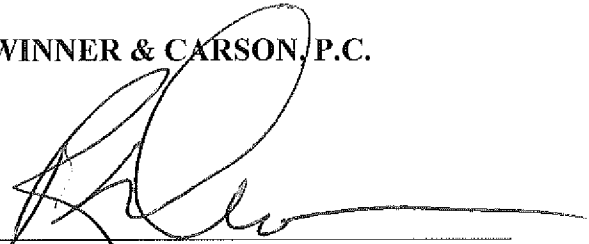
1 II.

2 CONCLUSION

3  
4 Candidly, Boulder suggests the puzzling language within our Constitution is  
5 actually a way for this Court to apply the MWA to the real world, and empowers  
6 this Court to consider evidence beyond only the dry language in the MWA.  
7

8 DATED this 7 day of July, 2016.

9  
10 WINNER & CARSON, P.C.

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1                                    **AFFIDAVIT OF ROBERT A. WINNER**

2        STATE OF NEVADA    )  
3                                    )ss:  
4        COUNTY OF CLARK    )

5                I, ROBERT A. WINNER, being first duly sworn under penalty of perjury,  
6        deposes and says:

7  
8                1.        Affiant is the Attorney for BOULDER CAB, INC., Petitioners, and  
9        testifies as follows:

10                2.        Affiant verifies that the facts and statements within the Reply are true  
11        and correct.

12  
13                FURTHER YOUR AFFIANT SAYETH NAUGHT.

14  
15  
16  
17                                      
18                                    ROBERT A. WINNER



22        Notary Public in and for said 7/1/16 Date  
23        Clark County, Nevada  
24  
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28

**Certificate of Compliance with N.R.A.P Rule 28.2**

I hereby certify that this Motion to Supplement Briefs Regarding Petition for Writ of Mandamus 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 Motion 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 1569 words.

Finally, I hereby certify that I have read this Motion, 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 Motion complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the Motion 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.

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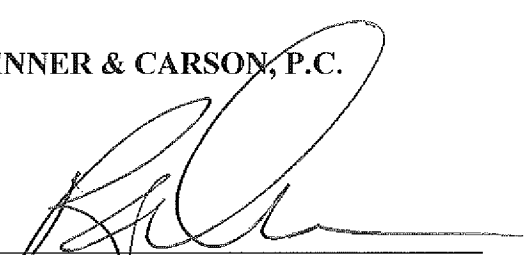
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1 I understand that I may be subject to sanctions in the event that the  
2 accompanying Motion is not in conformity with the requirements of the Nevada  
3 Rules of Appellate Procedure.  
4

5 DATED this 1 day of July, 2016.

6  
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The Honorable Timothy C. Williams  
Regional Justice Center  
Department 16  
200 Lewis Avenue  
Las Vegas, Nevada 89155  
(Via U.S. Mail)

**An employee of Winner & Carson, P.C.**