

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.

Case No.: 68975

Clark County District Court Case No. 68975

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Tracie 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 Petitioners Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation, and Nevada Star Cab Corporation's Petition for Writ of Mandamus filed on October 13, 2015, and seeking 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).

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. For example, state and federal trial courts 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conflict between the Minimum Wage Amendment and NRS 608.250(2), holding that the Minimum Wage Amendment had impliedly repealed NRS 608.250(2) and that employees previously excepted by statute from the minimum wage were now entitled to it under the Constitutional Amendment.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 limitation); *Boulder Cab, Inc. v. District Court (Herring)*, Case No. 68949 (seeking clarification as to the prospective effect of the 2014 *Thomas* decision); and *Western Cab Co. v. District Court (Perera)*, Case No. A68796 (petitioning for a two-year statute of limitations).

In this matter, Petitioners Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation and Nevada Star Cab Corporation have 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 Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation and Nevada Star Cab Corporation, 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”).

Changes in laws, whether enacted by the Legislature or adopted by constitutional amendment by popular referendum, generally operate prospectively and not retroactively. It is the position of Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation and Nevada Star Cab Corporation 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, as the Court is well aware from the numerous cases filed in the wake of the Minimum Wage Amendment, there are other infirmities that may render the entire Amendment violative of federal law and preempted by it. ERISA preempts state law requiring that employers offer a health insurance plan. Moreover, the Minimum Wage Amendment’s division between rates of minimum

wages depends on some undefined and vague offering of “health benefits.” The definition of “health benefits,” however, appears to have been preempted entirely by the federal Affordable Care Act, leaving no room for the states to enact their own conflicting standards.

In conclusion, the issues raised by Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation and Nevada Star Cab Corporation’s Petition should be resolved with all possible arguments presented to the Court. Western Cab therefore respectfully requests that the Court hear Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation and Nevada Star Cab Corporation’s Petition and also grant Western Cab leave to file a brief.

DATED: October 22, 2015

Respectfully submitted,

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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 22nd 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 22nd day of October, 2015, to the following:

The Honorable Ronald J. Israel
District Court Judge
Eighth Judicial District Court of Nevada
200 Lewis Avenue, #15C
Las Vegas, NV 89101


An Employee of Hejmanowski & McCrea LLC