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RICHARD SEGERBLOM, ESQ.

IN THE SUPREME COURT OF NEVADA

Electronically Filed
Feb 04 2016 10:12 a.m.

Sup. Ct. No. 68973
Dist. Ct No.:A-12-661726-C
Dept. No. XXVIII
Tracie K. Lindeman
Clerk of Supreme Court

-----X
NEVADA YELLOW CAB
CORPORATION, NEVADA
CHECKER CAB CORPORATION,
NEVADA STAR CAB
CORPORATION,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT of the State of Nevada, in
and For the County of Clarki, and
THE HONORABLE RONALD J.
ISRAEL, District Judge,

Respondents,

AND

CHRISTOPHER THOMAS and
CHRISTOPHER CRAIG,

Real Parties in Interest

AMICUS BRIEF OF INDUSTRIAL TECHNICAL PROFESSIONAL
EMPLOYEES UNION/OFFICE AND PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION LOCAL 4873, AFL-CIO IN SUPPORT OF
RESPONDENT'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

Undersigned counsel of record for proposed amicus curiae Industrial Technical Professional Employees Union/Office and Professional Employees International Union Local 4873, AFL-CIO (the "ITPEU") hereby certifies that there are no parent corporations or publically held companies owning ten percent (10%) or more of the ITPEU. The ITPEU is a labor organization and is a Local of the Office and Professional Employees International Union.

The law office of Richard Segerblom Ltd. is the only law firm that has appeared on behalf of the ITPEU in this case. The ITPEU is not using a pseudonym.

STATEMENT OF INTEREST OF AMICI

The issue in this case is whether this Court's Opinion in *Thomas v. Nevada Yellow Cab*, 372 P.3d 518, *rehearing denied* (2014) only granted declaratory ("prospective") relief to the taxi drivers employed by petitioners Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation and Nevada Star Cab Corporation ("YCS"). The *Thomas* Opinion concerned the rights of taxi drivers to receive minimum hourly wages pursuant to the 2006 enactment of Article 15, Section 16 of Nevada's Constitution.

The ITPEU has, pursuant to the provisions of the National Labor Relations Act, been certified as the collective bargaining representative of the YCS taxi drivers who are affected by this Court's decision in *Thomas*. The ITPEU, on behalf of the YCS taxi drivers, has negotiated a series of collective bargaining agreements ("CBA's") that have governed the employment of the YCS taxi drivers from before 2006 through the present. Those CBA's have never waived the rights granted to YCS taxi drivers under Article 15, Section 16 of Nevada's Constitution.

The ITPEU, as the labor union representing the YCS taxi drivers, is an organization controlled by its members, including the YCS taxi drivers. As such it is in a unique position to express the views and interests of its members, the YCS taxi drivers, who have a direct and personal interest in this proceeding.

SUMMARY OF ARGUMENT

In November of 2006 the voters of Nevada amended the Nevada Constitution to add Article 15, Section 16 to Nevada's Constitution stating, in relevant part, that "[e]ach employer shall pay a wage to each employee of not less than the hourly rates set forth in this section." Such constitutional amendment does not exclude taxi driver employees from its definition of "each employee" of "each employer." This Court's 2014 Opinion in *Thomas* properly found that taxi drivers were entitled to the minimum wage conferred by Article 15, Section 16 of

Nevada's Constitution.

Limiting the application of this Court's 2014 Opinion in *Thomas* only to employment taking place after such Opinion's issuance would be contrary to the American legal system's fundamental principles and the legal system of the State of Nevada. That YCS maintained an unsuccessful defense to the minimum wage liability alleged by its taxi drivers should not excuse it from liability for minimum wages earned prior to this Court's Opinion's publication. It would be particularly inequitable and unjust to allow YCS to evade such liability given its history of dealings with the ITPEU. Those dealings included, starting no later than in 2008, discussions with the ITPEU of the Nevada Constitution's minimum wage requirements in YCS's CBA negotiations with the ITPEU

ARGUMENT

I. THE COURT CANNOT ALLOW YCS TO NOW EVADE THE LIABILITY IMPOSED BY NEVADA'S CONSTITUTION

YCS unsuccessfully defended this case, as determined by this Court's 2014 Opinion, and is responsible for the unpaid minimum wages owed to its taxi driver employees as required by Nevada's Constitution. It was certainly entitled to raise its defense to that minimum wage liability and force its taxi drivers to litigate that issue. It is not properly allowed to now evade that liability for the time period prior to this Court's 2014 Opinion, including the time during which this case wended its way through the litigation process made necessary by YCS's denial of its responsibility under the Nevada Constitution.

The legal obligation imposed upon YCS by Article 15, Section 16 to Nevada's Constitution commenced upon the effective date of such constitutional amendment in 2006. See, *Tovinen v. Rollins*, 560 P.2d 915, 916-917 (Nev. Sup. Ct. 1977). Both YCS and its taxi drivers, through their union the ITPEU, have proceeded to take action, and - in the case of the ITPEU - declined YCS's efforts to take action which would have nullified the impact of Nevada's Constitutional

minimum wage amendment since 2006. YCS had sought, and the ITPEU consistently refused, agreement to a waiver of the minimum wage rights granted by Nevada's Constitution, since at least 2008. AA1 1-4.¹

That Nevada's Constitutional minimum wage amendment was a new law, imposing a new liability that YCS decided to dispute, does not give it a legal basis to be granted a "declaratory" or "prospective/future relief only" ruling on that liability. A defendant unsuccessfully contesting the validity of a newly enacted statutory or constitutional obligation is not relieved of that obligation during the "post enactment" to "final judicial enforcement ruling" period.

It would be fundamentally unjust to grant "prospective only" relief against a party, such as YCS, who waits to be sued for a liability imposed by a new statute or constitutional provision. This is particularly true because YCS had advance notice of the potential legal obligation imposed by Nevada's Constitution for minimum wages and sought to have the ITPEU waive that liability, which the ITPEU, on behalf of the YCS taxi drivers, refused to do. YCS's argument is tantamount to the untenable assertion that someone does not have to obey any law until there is a final determination by a court as to what that law means.

YCS could have also acted upon its belief the Nevada Constitution's minimum wage requirements were inapplicable to taxi drivers by promptly seeking, upon such provision's enactment, a binding and final judicial declaration on that issue. It should not now be rewarded, with an extended "no liability" period, for waiting to be sued on that issue.

"The general rule that judicial decisions are given retroactive effect is basic in our legal tradition." See, *Newman v. Emerson Radio Corp.*, 48 Cal. 3d 973, 978 (Cal. Sup. Ct. 1989), citing *Linkletter v. Walker*, 381 U.S. 618, 622 (1965) ("At common law there was no authority for the proposition that judicial decisions

¹ AA references are to Amicus Appendix

made law only for the future", citing 1 Blackstone, Commentaries 69 (15th ed. 1809)).

Under the common law, as discussed in Blackstone and in cases such as *Linkletter*, courts *never* issued "future conduct only" decisions when a party's past conduct had been found to violate a legal duty. Under the common law courts do not "make" but simply "declare" what the law had always been. This situation is totally distinct from that in *Linkletter*, which involved new *judicially created constitutional rights that overruled prior judicial precedents*. *Linkletter* declined to grant retroactive force to its decision in *Mapp v. Ohio*, 367 U.S. 643 (1961), which overruled prior Supreme Court precedents on the Fourth Amendment's exclusionary rule in state criminal prosecutions. 367 U.S. at 637-38. Retroactive application in *Linkletter* would have invalidated countless convictions that were completely valid under prior United States Supreme Court precedents and created an untenable situation.

There is no basis for this Court to deviate from the common law approach in this civil, constitutional right, case and apply some sort of prospective application limit as used in *Linkletter* and similar criminal law cases. "In general, with regard to civil matters, prospective-only decision-making within the realm of constitutional law is disfavored." *Alabama State Docks Terminal Ry. v. Lyles*, 797 So.2d 432, 439 (2001). "Since the Constitution does not change from year to year; since it does not conform to our decisions, but our decisions are supposed to conform to it; the notion that our interpretation of the Constitution in a particular decision could take prospective form does not make sense." *Id.*, citing and quoting *American Trucking Ass'ns, Inc. v. Smith*, 496 U.S. 167, 201, (1990) (Scalia, J., concurring).

The very rare civil cases where rulings have been made purely prospective have involved judicially created law and a jurisdiction's highest court's recognition of previously unknown, and otherwise unknowable, rights or the overruling of

prior judicial precedents. See, *Isbell v. County of Sonoma*, 21 Cal.3d 61, 74-75 (Cal. Sup. Ct. 1978) (Finding California's statutory confession of judgment procedures void as a violation of constitutional principles of due process but declined to vacate en masse all prior judgments so entered since most were presumably based upon legitimately owed debts, but still granting those debtors standing to individually void those judgments and impose upon creditors the burden of showing compliance with its holding).

The ruling YCS seeks goes far beyond the holding of *Isbell* and similar cases. As Real Party in Interest's brief amply demonstrates, YCS's claim that this Court's 2014 Opinion, if not applied in a purely prospective fashion, will "produce substantial inequitable results," and will cause it a hardship it did not, and could not, in good faith have expected, are completely specious. YCS knew there was at least the possibility that it would be required to pay the minimum wage rates under the Constitutional amendment, as that is why it sought the waiver during collective bargaining. The companies which negotiate with the Steel Workers knew there was at least that possibility, as that is why they obtained the waiver in their collective bargaining agreements.

It is the hard working taxi drivers of YCS, who through their union, the ITPEU, refused YCS's repeated requests that they waive their minimum wage rights under Nevada's Constitution, who will suffer a grievous and a "substantial inequitable result" if the writ is granted. YCS will abscond with the minimum wages that its taxi drivers are owed under Nevada's Constitution and that they refused to waive. No inequity to YCS will occur if YCS is required to comply with the Nevada Constitution from the time the amendment went into effect and, thus, to pay those taxi drivers the very modest minimum wages it should have already paid them.

CONCLUSION

In accordance with the above, the amici curiae request that the writ petition be denied.

RESPECTFULLY SUBMITTED this 19th day of January, 2016.

/s/

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Certificate of Compliance With N.R.A.P Rule 28.2

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 14 point Times New Roman typeface in wordperfect.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 40(b)(3) 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 1692 words.

Finally, I hereby certify that I have read this 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 this January 15, 2016

/s/_____
Richard Segerblom, Esq.