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Appellant,

V.

Respondents.

Supreme Court No. 82762
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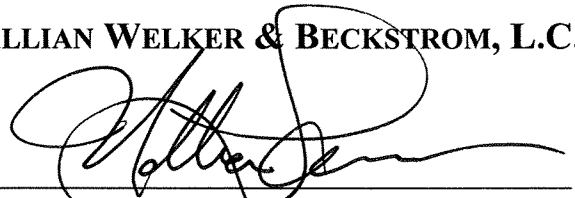
NEVADA RULES OF APPELLATE PROCEDURE
RULE 26.1 (“NRAP 26.1”) DISCLOSURE

The undersigned counsel of record certifies the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

1. The Appellant, DAVID A. GONZALEZ (“Mr. Gonzalez”), is an individual to whom the corporate ownership disclosures under NRAP 26.1(a) are inapplicable. Mr. Gonzalez is appearing under his proper name and is not using any pseudonym.
2. The undersigned counsel of record has appeared in this matter before the District Court and in the prior administrative inquiries to Kacey KC and the Nevada Division of Forestry.

DATED this 29th day of October 2021.

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TABLE OF AUTHORITIES.

CASES.

Morgan v. MacDonald, 41 F.3d 1291 (9th Cir. 1994) 2, 7

STATUTES, RULES, AND REGULATIONS.

Nevada Constitution, Article 15, §16 (“MWA”)..... *passim*

Fair Labor Standards Act (“FLSA”)..... *passim*

NRS 209.463..... 5, 6, 7

OTHER.

Incarceration & social inequality by Bruce Western and Becky Pettit. © American Academy of Arts and Sciences, as published in *Daedalus Summer 2010*.

http://www.mitpressjournals.org/doi/pdf/10.1162/DAED_a_00019..... 4

https://www.workingpoorfamilies.org/wp-content/uploads/2015/03/WPFP-2015-Report_Racial-Ethnic-Divide.pdf.4

<https://naacp.org/resources/criminal-justice-fact-sheet> 4

U.S. Department of Justice, Office of Justice Programs, National Institute of Justice “Sentencing and Corrections: Issues for the 21st Century.” November 2000.

<https://www.ojp.gov/pdffiles1/nij/184253.pdf> 5, 6

www.clarkcountynv.gov/government/departments/fire_department/become_a_fire_fighter.php 6

I. STATEMENT OF THE CASE.

As fully articulated in prior briefs, this matter is before the Court for a determination as to whether or not Appellant DAVID A. GONZALEZ (“Appellant” or “Mr. Gonzalez”), for the time in which he was an inmate in the Nevada Department of Corrections (“NDOC”) Three Lakes Valley Conservation Camp (“TLVCC”) working for the Nevada Division of Forestry (“NDF”), was entitled to receive the minimum wage under Article 15, Section 16 of the Nevada Constitution (the “Minimum Wage Amendment” or “MWA”).

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY.

The facts and procedural posture of the case have been thoroughly and adequately stated in prior briefing, and reiteration here is unnecessary.

III. SUMMARY OF ARGUMENT.

As all the particular arguments with respect to applicability of the various caselaw and interpretation of relevant statutes and the MWA itself were initially raised and argued below, Appellant believes the Opening Brief sufficiently speaks to those aspects of the matter, and, accordingly, they are not further addressed with any specificity in the instant Reply Brief. Rather, the Reply Brief speaks to Respondents’ final argument regarding the “big picture” public policy questions,

1 the general applicability of a minimum wage policy that is favorable to inmates,
2 and the positive impact of such a policy for not only those individuals most
3 disadvantaged in society but also for society and the State of Nevada as a whole.
4 Far from being contraindicated by public policy, affording a minimum wage to
5 working and motivated inmates is a positive step forward (though just one step of
6 many that is needed) for potentially combatting unrelenting and unabated systemic
7 poverty, reducing rates of recidivism, and, through reduced recidivism, mitigating
8 costs of incarceration to the people of the State.
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12 IV. ARGUMENT.

13 a. The Benefits of Inmate Minimum Wage Are Manifold, With 14 Positive Benefits for Society and the State of Nevada.

15 In concluding that public policy would not support granting payment of the
16 minimum wage to working inmates, Respondents largely rely on the premise that
17 there is functionally no “cost of living” consideration for incarcerated inmates “for
18 whom clothing, shelter, and food are provided by the prison.” *Morgan v.*
19 *MacDonald*, 41 F.3d 1291 (9th Cir. 1994). While this may facially seem
20 reasonable, it is, in reality, far from accurate, insomuch as makes no consideration
21 of any factors outside the prison walls and the circumstances of life both before and
22 after an inmate is incarcerated. As is explicated below, there remain substantial
23 cost of living considerations for inmates beyond mere provision of clothing, shelter,
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1 and food, and a broader analysis of the full economic reality facing inmates supports
2 payment of the minimum wage.

3 One of the first and simplest considerations is found in the supposed and
4 asserted provisions afforded an inmate as a consequence of incarceration: clothing.
5 While it is certainly true that inmates are provided a prison uniform, that “clothing”
6 never goes beyond the prison door, and inmates do not walk out of prison into an
7 economically harsh real life with a fresh wardrobe. They leave only with the
8 “clothing” with which they entered, not having accumulated a single thread or
9 further provision for the life that follows release, and this small example speaks to
10 the first major “economic reality” for which an inmate minimum wage would prove
11 ameliorative. Upon release, a fortunate inmate may have a supportive family on
12 which to rely, but that family is highly unlikely to be financially well positioned,
13 often because of the lost income of the incarcerated individual. Receipt of
14 minimum wage while incarcerated could afford economic support to an inmate’s
15 family while the inmate is incarcerated or otherwise allow some accumulation of
16 available funds on which the inmate could rely as he or she seeks to reintegrate into
17 society. Instead, most inmates are birthed from poverty into incarceration, and from
18 incarceration to poverty they return, with minimal ability or opportunity to ever
19 change anything about that repeating pattern... with the continuing poverty often
20 leading to further return to incarceration.
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1 Incarceration rates are highest for young men in their twenties and early
2 thirties, and most of the historical growth in incarceration rates is concentrated at
3 the lowest levels of the educational strata, to wit, among young men with very low
4 levels of education.¹ While racial factors in this analysis cannot be overlooked,^{2 3}
5 one of most consistent factors in determining likelihood of incarceration is poor
6 education, poor earning potential and economic mobility, and seemingly
7 inescapable poverty. A reversal of this reality cannot be found in a system that
8 continues to assure that inmates and their families remain impoverished.
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12 Many incarcerated young men leave behind wives and children, who are
13 inarguably economically harmed by the loss of probable support that the
14 incarcerated individual may provide. While the fault for the initial incarceration
15 may certainly follow from the initial bad acts of the inmate, as Respondents note,
16 “[i]ncarceration is a punishment,” but such a statement glibly elides the economic
17 impact upon an inmate’s family and places the Respondents in the untenable
18 position of arguing that a working inmate’s family should also be punished by the
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23 ¹ See *Incarceration & social inequality* by Bruce Western and Becky Pettit. © American
24 Academy of Arts and Sciences, as published in *Daedalus Summer 2010*.

http://www.mitpressjournals.org/doi/pdf/10.1162/DAED_a_00019

25 ² “Among the 10.6 million low income working families in America, racial/ethnic minorities
26 constitute 58 percent, despite only making up 40 percent of all working families nationwide.”
27 [https://www.workingpoorfamilies.org/wp-content/uploads/2015/03/WFPF-2015-](https://www.workingpoorfamilies.org/wp-content/uploads/2015/03/WFPF-2015-Report_Racial-Ethnic-Divide.pdf)
28 [Report_Racial-Ethnic-Divide.pdf](https://www.workingpoorfamilies.org/wp-content/uploads/2015/03/WFPF-2015-Report_Racial-Ethnic-Divide.pdf).

³ “32% of the US population is represented by African Americans and Hispanics, compared to
56% of the US incarcerated population being represented by African Americans and Hispanics.”
<https://naacp.org/resources/criminal-justice-fact-sheet>.

1 inmate's incarceration. A working inmate, afforded a minimum wage for work
2 rendered, can at least be somewhat positioned to provide some support to children
3 and family, thereby reducing his own family's poverty and the general
4 impoverishment of the inmate's broader community. This would actually constitute
5 a 180-degree reversal of the current paradigm wherein most inmates are reliant on
6 money from outside to cover multiple expenses in prison that the State does not
7 cover... instead of supporting their family, they are actually being supported by their
8 family. Additionally, as noted above, any mitigation of an individual's poverty can
9 only have a positive impact on reducing likelihood of future incarceration,
10 potentially breaking the intergenerational poverty/incarceration cycle, as described.
11 These are laudable results, reflect a policy which the public should favor, and is
12 already statutorily contemplated in NRS 209.463(b), though the statutory provision
13 is of none effect unless the inmate can garner sufficient earnings.
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19 Additionally, any accumulation of funds resultant from greater earnings as a
20 working inmate better situate an inmate for transition back to the real world. "The
21 majority of inmates leave prison with no savings, no immediate entitlement to
22 unemployment benefits, and few job prospects."⁴ "One year after release, as many
23 as 60 percent of former inmates are not employed in the legitimate labor market...
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27 ⁴ U.S. Department of Justice, Office of Justice Programs, National Institute of Justice "Sentencing
28 and Corrections: Issues for the 21st Century." November 2000.
<https://www.ojp.gov/pdffiles1/nij/184253.pdf>

1 Employers are increasingly reluctant to hire ex-offenders. A recent survey in five
2 major U.S. cities revealed that 65 percent of all employers said they would not
3 knowingly hire an ex-offender (regardless of the offense).⁵ In contradiction of the
4 above facts, Respondents inaccurately assert that “inmates are allowed, as a reward,
5 to volunteer for outdoor work and training that may instill valuable experience for
6 improved post-release outcomes.” This is simply not reflective of the economic
7 reality that inmates face when they are released and the significant burden they will
8 face trying to become economically productive in society again. Ironically, in
9 Appellant’s particular circumstance, the so-called “valuable experience” garnered
10 by an inmate learning to fight fires is of no post-release value whatsoever:
11 “Applicants are not eligible to apply [to the Clark County, Nevada fire department]
12 if they have been convicted of a felony.”⁶ To the extent that earning a minimum
13 wage while incarcerated would have some ameliorative effect on this brutal
14 economic circumstance, by allowing even a meager accumulation of a lilliputian
15 nest egg, this is, again, something which should be favored by public policy. As
16 referenced above and in Appellant’s Opening Brief, this is also already statutorily
17 contemplated in NRS 209.463(d), though the statutory provision is, of course, of
18 none effect unless the inmate can garner sufficient earnings.
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28 ⁵ *Id.*

⁶ www.clarkcountynv.gov/government/departments/fire_department/become_a_fire_fighter.php

1 In addition to the easily discernible positive outcomes above, NRS
2 209.463(a) also speaks to another positive result for society and the State of Nevada
3 whereby monies may return from an inmate's income to the State Treasurer for
4 credit to the Fund for the Compensation of Victims of Crime. Additionally, many
5 inmates have a court order or civil confession of judgment requiring direct
6 restitution to the particular victim. If an ostensible goal of incarceration is to require
7 that an inmate repay a debt to society, it is much more effectively achieved, not by
8 just simply locking the offender away from the rest of society, but by giving the
9 inmate the means and wherewithal to actually effect payment to society and to the
10 victims of crime. The psychological benefit for a post-release inmate who is, by
11 some means, able to assume direct responsibility for his crimes is likely
12 incalculable, but it would reasonably be measured on the same balance as the
13 benefit of improved self-worth garnered by an inmate who could find some measure
14 of him/herself in the money earned by his/her own labor, not such labor as is
15 presently deemed to be owned (sadly, much like the person in the current paradigm)
16 by the State.

23 All of the above are the truest "economic realities" which *Morgan* would
24 require us to consider, and, in consideration of these realities, which an inmate
25 minimum wage could begin to ameliorate (leading to reduced recidivism and lesser
26 costs of incarceration to the citizens of Nevada), there is only one proper conclusion.
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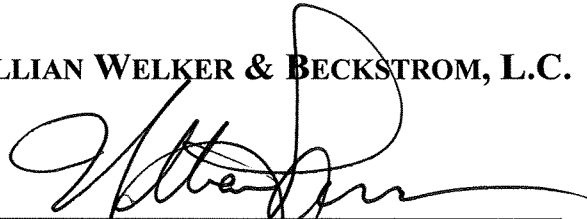
1 The public interest is best served by the inmate minimum wage, and such a wage is
2 authorized by the Minimum Wage Amendment (as more directly argued in
3 Appellant's Opening Brief).
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6 **V. CONCLUSION.**
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8 For the reasons set forth above, Plaintiff and Appellant David A. Gonzalez
9 respectfully requests that this Court find in his favor, reverse the decision of the
10 District Court, and remand the matter for calculation and award of damages for
11 unpaid wages for the period of his employment.
12

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15 DATED this 29th day of October 2021.
16

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CERTIFICATE OF COMPLIANCE

1
2 1. I hereby certify that this brief complies with the formatting
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and
4 the typestyle requirements of NRAP 32(a)(6), because this brief has been prepared
5 in a proportionally spaced typeface using Microsoft Word in size 14 font, Times
6 New Roman type face.
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8

9
10 2. I further certify that this brief complies with the page- or type-volume
11 limitations in NRAP 32(a)(7)(A)(i) because, exclusive of those sections excluded
12 under NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points,
13 and contains approximately 1,750 words within 8 pages.
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17 3. Finally, I hereby certify that I have read this appellate brief, and to the
18 best of my knowledge, information, and belief, it is not frivolous or interposed for
19 any improper purpose. I further certify that this brief complies with all applicable
20 Nevada Rules of Appellate Procedure, in particular, NRAP 28(e)(1), which requires
21 that every assertion in the brief regarding matters in the record be supported by
22 reference to the page and volume number, if any, of the Appendix.
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4. 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 29th day of October 2021.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 29th day of October 2021, I served a true and correct copy of the foregoing **APPELLANT'S REPLY BRIEF** as filed, by way of the Supreme Court's electronic filing system to the following:

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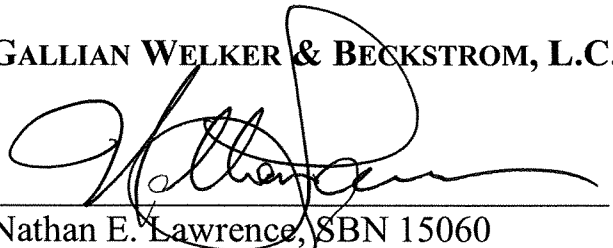
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