IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

WESTERN CAB COMPANY,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for the COUNTY OF CLARK; and THE HONORABLE LINDA MARIE BELL, District Judge,

Respondents,

and

LAKSIRI PERERA, Individually and on behalf of others similarly situated,

Real Party in Interest.

Case No.: _____

District Court Case No. A-14-707425-C

PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

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NRAP 26.1 DISCLOSURE

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that Petitioner Western Cab Company has no parent corporation and no publicly held company owns 10% or more of its stock.

The undersigned counsel of record further certifies that she is the only attorney who has appeared for Petitioner Western Cab Company in the proceedings in the District Court and in this Court, and that she appeared since January 2015 through the law firm of Hejmanowski & McCrea, LLC, and previously through the law firm Lionel Sawyer & Collins.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. RELIEF SOUGHT

Pursuant to NRAP 21, NRS 34.160, NRS 34.170, NRS 34.190, NRS 34.330, NRS 34.340 and Art. VI, Sec. 4, of the Nevada Constitution, Petitioner Western Cab Company ("Western Cab") seeks this Court's resolution by writ of mandamus or alternatively by writ of prohibition of a serious and frequently occurring issue of Nevada employment law: What limitation of action applies to claims for back minimum wage under the Minimum Wage Amendment, Nevada Constitution, Art. XV, Sec. 16, when the employee seeking relief, such as a taxicab driver, was previously excepted by NRS 608.250(2) from the statutory minimum wage mandate?

To date, courts have inconsistently applied two, three and four-year limitations in back minimum wage cases. Some cases have been brought by employees who were not previously excepted from minimum wage by NRS 608.250(2), which exception was invalidated in 2014 by *Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 418 (2014). Although this Court has set an *en banc* argument for October 6, 2015, on a writ petition filed in Case No 66629, *Williams v. District Court* (*Claim Jumper Acquisition Co.*) ("Williams"), concerning the statute of limitations for back minimum wage claims, that dispute does not raise and may not consider the same issues presented by this petition since the Williams

plaintiffs/petitioners -- food servers, bartenders and other restaurant employees -- were not previously excepted from minimum wage under NRS 608.250(2).

Western Cab requests that the Court issue a writ compelling the Honorable Linda Marie Bell, Eighth Judicial District Court Judge, to vacate her June 16, 2015 and August 27, 2015, decisions and orders (App. 1 and App. 2) applying the four-year "catch all" statute of limitations, NRS 11.220, to claims for back wages brought by taxicab drivers, previously exempted from minimum wage under NRS 608.250(2), and to enter an order that the statute of limitations for such claims is the two-year statute for back wages, NRS 608.260.

II. ISSUE PRESENTED

Whether the two-year statute of limitations for back minimum wage, NRS 608.260, governs claims of plaintiffs who were previously excepted from minimum wage by NRS 608.250(2)?

III. FACTS NECESSARY TO UNDERSTAND THE ISSUE PRESENTED

On September 23, 2014, Real Party in Interest Laksiri Perera ("Perera") filed suit in the Eighth Judicial District Court demanding back minimum wage on behalf of himself and a putative class of former Western Cab taxicab drivers in reliance on

the 2006 Minimum Wage Amendment, Art. XV, Sec. 16, of the Nevada Constitution.[1]

On December 8, 2014, Western Cab moved to dismiss on the grounds that Perera's claims were partially barred by NRS 608.260, which provides a two-year limitation for back minimum wage:

> **Action by employee to recover difference between minimum wage and amount paid; limitation of action.**
>
> If any employer pays an employee a lesser amount than the minimum wage prescribed by regulation of the Labor Commissioner pursuant to the provisions of NRS 608.250, the employee may, at any time within two years, bring a civil action to recover the difference between the amount paid to the employee and the amount of the minimum wage.[2]

Perera opposed Western Cab's motion, urging that the District Court apply Nevada's "catch all" four-year statute of limitations, NRS 11.220, to his claim, since it was brought under the Minimum Wage Amendment and not NRS 608.250.[3]

After Western Cab filed its reply brief (App. 8), the District Court heard the parties' arguments on March 12, 2015.[4] On June 16, 2015, District Judge Bell entered her Decision and Order, App. 1, concluding that since taxicab drivers had no

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[1] Complaint, App. 3. Perera repeated this claim in his October 20, 2014, First Amended Complaint and his June 16, 2015, Second Amendment Complaint, respectively, App. 4 and 5.

[2] Western Cab's 12/8/14 Motion to Dismiss, App. 6, at p. 73.

[3] Plaintiff's 1/26/15 Response to Defendant's Motion to Dismiss and Countermotion to Amend the Complaint and Conduct Discovery under NRCP Rule 56(f), App. 7 at p. 88.

[4] 3/12/15 Reporter's Transcript, App 9.

right to minimum wage absent the Minimum Wage Amendment which relieved the State Labor Commissioner of responsibility for setting the Nevada minimum wage, NRS 608.260 was inapplicable to their claims which were instead governed by NRS 11.220, the four-year "catch all" statute of limitations. The District Court explained:

> The Minimum Wage Amendment expressly provides a private right of action for an employee claiming violation of the Minimum Wage Amendment. Specifically, the Minimum Wage Amendment provides:
>
> > An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her attorney's fees and costs.
>
> Nev. Const. art. 15, § 16(B) (emphasis added).
>
> On the contrary, Chapter 608 provides a private right of action only for an employee claiming violation of regulations promulgated under NRS 608.250:
>
> > If any employer pays any employee a lesser amount than the minimum wage prescribed by regulation of the Labor Commissioner pursuant to the provisions of NRS 608.250, the employee may, at any time within 2 years, bring a civil action to recover the difference between the amount paid to the employee and the amount of the minimum wage.
>
> NRS 608.260 (emphasis added).
>
> The distinction between minimum wage prescribed by regulation of the Labor Commissioner pursuant to the provisions of NRS 608.250 and minimum wage established by the Minimum Wage Amendment is the method by which the minimum wage is established: Chapter 608 grants the Labor Commissioner authority to set and discretion to raise the minimum wage through administrative regulation; while the Minimum Wage Amendment establishes a two-tiered minimum wage

floor that is automatically adjusted upward without administrative discretion. See NRS 608.250(1); but cf. Nev. Const. art. 15, §16(A).

* * *

The Minimum Wage Amendment provides the exclusive private right of action for taxicab drivers to enforce Nevada's minimum wage law. Accordingly, the limitation on a taxicab driver's right to enforce the minimum wage law is defined by the limitations of the Minimum Wage Amendment itself. Although the Minimum Wage Amendment does not provide a claims limitation period for an employee claiming violation of the Amendment, Nevada Revised Statute section 11.220 provides that "[a]n action for relief, not hereinbefore provided for, must be commenced within 4 years after the cause of action shall have accrued." NRS 11.220. So without specific statutory prescription stating otherwise, claims for violations of the Minimum Wage Amendment must be brought within four years of the cause of action having accrued. Therefore, Mr. Perera's action to enforce Nevada minimum wage law pursuant to the Minimum Wage Amendment is subject to the four-year claims limitation period provided under NRS 11.220.[5]

On July 1, 2015, Western Cab moved for reconsideration,[6] with its Reply filed August 19, 2015.[7] Perera's Opposition was filed on July 20, 2015.[8] Western Cab argued that (1) even with the Minimum Wage Amendment, the Nevada Labor Commissioner remains responsible for setting the annual minimum wage; (2) NRS 608.115, requiring employers to maintain "records of wages" for a two-year period strongly supports application of the two-year time limit for back minimum wage claims, whether or not the employee was previously excepted from the minimum

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[5] 6/16/15 Decision and Order, App. 1, pp. 7-10.

[6] 7/1/15 Motion for Reconsideration of Portion of this Court's June 16, 2015 Decision and Order, App. 10.

[7] 8/19/15 Reply in Support of Motion for Reconsideration, App. 11.

[8] Perera's July 20, 2015, Opposition, App. 12.

wage; (3) it is irrational and unfair to have two time-limitations for back minimum wage, a four-year limit for persons previously excepted from the minimum wage and a two-year limit for those previously covered by it, both of whom could be employed by the same employer, as is the result for Western Cab; (4) the severance doctrine, as established by numerous decisions of this Court and NRS 0.020 requires that statutes be read to give them as much effect as possible and to uphold their constitutionality; (5) NRS 608.260 and the Minimum Wage Amendment are capable of being harmoniously read to preserve application of NRS 608.260's two-year limitation for back minimum wage claims; and (6) the implied repeal of NRS 608.260 must be avoided if possible and NRS 608.260 and the Minimum Wage Amendment are rationally harmonized.

Both Western Cab and Perera presented the District Court with extensive points and authorities, including other decisions addressing the limitation period for Minimum Wage Amendment claims. Among other cases, *Golden v. Sun Cab, Inc.*, Eighth Judicial District Court Case No. A678109, and *Gilmour v. Desert Cab, Inc.*, Eighth Judicial District Court Case No. A668502, arose from claims of plaintiffs who were previously excepted from the minimum wage, as here. In those cases, the District Court, respectively District Judges Ellsworth and Herndon, applied NRS

608.260's two-year limitation.[9] In *Thomas v. Nevada Yellow Cab Corp.*, Eighth Judicial District Court Case No. 661726, District Court Judge Israel applied the four-year catch-all statute. [10] The other cases presented to the District Court considered the statute of limitations cases applicable to claims brought by plaintiffs not previously excepted from minimum wage under NRS Chapter 608 and in those cases, the courts generally applied NRS 608.260's two-year limitation, *e.g.*:

- *Williams v. Claim Jumper Acquisition Co.*, Eighth Judicial District Court Case No. A702048, in which District Judge Tao applied the two-year statute in a non-driver suit;[11]

- *Rivera v. Peri & Sons Farms, Inc.*, 805 F.Supp.2d 1042, 1046 (D. Nev. 2011), in which U.S. District Court Judge Jones applied a 2-year statute of limitations;

- *Rivera v. Peri & Sons*, 735 F.2d 892, 902 (9th Cir. 2013), affirming Judge Jones' application of the two-year statute;

- *Hanks v. Briad Restaurant Group*, 2015 WL 4562755 (D. Nev. July 27, 2015), in which District Judge Navarro applied the two-year statute;

- *McDonagh v. Harrah's Las Vegas, Inc.*, 2014 WL 2742874,

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[9] *See* App. 10, including *Golden v. Sun Cab* Minute Order Ex. 7. A copy of the District Court's decision in *Gilmour* is attached at App. 15.

[10] *See* Exhibit 12 to App. 11, Western Cab's Reply in Support of Motion for Reconsideration of Portion of This Court's June 16, 2015 Decision and Order, District Judge Israel's Order Denying Defendants' Motion for a Declaratory Order to Limit the Statute of Limitations pursuant to NRS 608.260, and Exhibit 13, a transcript of the hearing before District Judge Israel.

[11] 9/22/14 Order on Plaintiffs' Motion for Partial Summary Judgment Regarding Limitation of Actions, Exhibit 6 to App. 10, Petitioner's 7/1/15 Motion for Reconsideration of Portions of This Court's June 16, 2015 Decision and Order. Williams is the subject of a Writ Petition filed in this Court, Case No. 66629, set for oral argument on October 6, 2105.

*4 (D. Nev. June 17, 2014), in which District Judge Mahan applied the two-year statute of limitations;

- *Tyus v. Wendy's of Las Vegas, Inc.*, 2015 WL 1137734, *2-3 (D. Nev. March 13, 2015), in which District Judge Navarro held that the *Thomas* decision did not impliedly repeal NRS 608.260 and that the two-year statute applied;

- *Diaz v. MDC Restaurants, LLC*, Eighth Judicial District Court Case No. A701633, in which Judge Williams applied the 4-year catch all statute;[12]

- *Perry v. Terrible Herbst, Inc.*, Eighth Judicial District Court Case No. 704428-C, in which Judge Bare applied the two-year statute;[13]

- *Sheffer v. U.S. Airway, Inc.*, 2015 WL 3458192 (D. Nev. 215), in which U.S. District Court Judge Jones applied a 3-year statute governing actions based on a statutory right as the "most obvious candidate" based on his belief the Nevada Supreme Court would treat the claim as a statutory one for purposes of the limitations period;"

- *Franklin v. Russell Road Food and Beverages,* Eighth Judicial District Court Case No. A709372, in which District Judge Kishner applied the two year statute of limitations. Judge Kishner expressed concern that

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[12] *See* Exhibit 8 to App. 10, Western Cab's 7/1/2015 Motion for Reconsideration of Portion of This Court's June 16, 2015 Decision and Order, Judge Williams' Findings of Fact, Conclusions of Law, and Order. Judge Williams' decision is subject of a writ petition before this Court in Case No. 67631.

[13] Western Cab's 3/9/15 First Supplement to Reply to Plaintiff's Response and Supplement to His Response to Defendant's Motion to Dismiss and Opposition to Plaintiff's Countermotion and Conduct Discovery under NRCP Rule 56(f), Exhibit 14, App. 13.

> a four-year result would be inconsistent with the two-year record-keeping obligation of employers under NRS 608.115(3).[14]

On August 27, 2015, the parties presented their arguments on rehearing and on the same date, the District Court announced her decision to deny the motion for reconsideration.[15] Perera's potential class action is in its initial stages and this Court's clarification by writ as to the limitation applicable to cases brought by plaintiffs formerly excepted from receipt of minimum wage under NRS Chapter 608 is necessary and appropriate to resolve confusion in the state's trial courts as to this important and frequently occurring issue and to effect sound judicial economy and administration.

IV. STANDARDS FOR WRIT RELIEF

Writ relief is available "to control an arbitrary or capricious exercise of discretion." *State v. Eighth Judicial Dist. Court*, 131 Nev. Adv. Op. 41, 351 P.3d 736, 740 (2015) ("*Ad America*"), granting writ relief to clarify availability of inverse condemnation relief and *citing International Gaming Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558-59 (2008). Writ relief is

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[14] *See* Exhibit 9 to App. 10 Western Cab's 7/1/2015 Motion for Reconsideration of Portion of This Court's June 16, 2015 Decision and Order, Judge Kishner's Order Granting in Part and Denying in Part Defendant, Russel Road Food and Beverage, LLC's Motion to Dismiss and Granting Defendant's Motion to Strike Prayer for Exemplary and Punitive Damages.

[15] *See* 8/27/15 Minute Order, App. 2; *see also*, App. 2, 8/27/15 Transcript, p. 18 ('I'm going to start with the motion to reconsider because I don't really need argument on that. I'm going to deny that.")

appropriately granted when "an important issue of law needs clarification and considerations of sound judicial economy and administration militate in favor of granting the petition." *Id.*; *see also, Imperial Credit Corp. v. Eighth Judicial Dist. Court*, 130 Nev. Adv. Op. 59, 331 P.3d 862, 864-65 (2014) (granting writ relief where trial court improperly denied motion of out-of-state counsel to appear); *In re Irrevocable Trust Agreement of 1979*, 130 Nev. Adv. Op. 63, 331 P.3d 881, 884-85 (2014) (issuing writ to correct district court's grant of partial summary judgment based on misinterpretation of law).

Ad America undertook writ review and issued writ relief in part because "judicial economy" was best served by resolving once and for all the question of when a taking within the intendment of the Fifth Amendment occurred: "[G]iven Project Neon's magnitude as a 20- to 25-year, six phase freeway improvement project requiring multiple acquisitions of private property and the inevitability of other similar long-term projects in the future, addressing the issues raised in this petition will serve judicial economy." 351 P.3d at 740; *see also, Oxbow Construction, Inc. v. Eighth Judicial Dist. Court*, 130 Nev. Adv. Op. 86, 335 P.3d 1234, 1238 (2014) (undertaking writ review in interests of "sound judicial economy and administration" in consolidated proceedings with regard to clarification of meaning of "new" with regard to residential construction projects).

Where there is confusion as to what statute of limitations applies, as here, clarification by writ issued early in the proceedings is particularly appropriate. *Double Diamond Ranch Master Ass'n v. Second Judicial District Court*, 131 Nev. Adv. Op. 57, ___ P.3d ___, 2015 WL 4598332, *2 (2015) (reviewing by writ whether 90-day notice required to terminate homeowners' association maintenance agreement constituted a statute of limitations as petition presented "an important issue of law in need of clarification, and resolving this issue at this stage in the proceedings would promote judicial economy"); *Libby v. Eighth Judicial Dist. Court*, 130 Nev. Adv. Op. 39, 325 P.3d 1276, 1279 (2014) (case presented issue of first impression regarding when the three-year limitation under NRS 41A.097 began and since the district courts were inconsistently applying the statute, the Supreme Court exercised its discretion to consider the merits of the petition to clarify the law). This case meets all of the standards for grant of writ relief.

V. NRS 608.260'S TWO-YEAR LIMITATION MUST BE APPLIED UNIFORMLY TO ALL CLAIMS FOR BACK MINIMUM WAGE

A. THE APPLICABLE STATUTES AND THE MINIMUM WAGE AMENDMENT

NRS Chapter 608 is titled "Compensation, Wages and Hours," with subsection 608.250 -.290 titled "Minimum Wage." According to NRS 608.250, the Labor Commissioner "establishes" the minimum wage, which now applies to all Nevada

employers and employees as a result of this Court's decision in *Thomas*. NRS 608.250 thus provides:

> **NRS 608.250 Establishment by Labor Commissioner; ...; penalty.**
>
> 1. Except as otherwise provided in this section, the Labor Commissioner shall, in accordance with federal law, establish by regulation the minimum wage which may be paid to employees in private employment within the State. The Labor Commissioner shall prescribe increases in the minimum wage in accordance with those prescribed by federal law, unless the Labor Commissioner determines that those increases are contrary to the public interest.[16]
>
> * * *
>
> 3. It is unlawful for any person to employ, cause to be employed or permit to be employed, or to contract with, cause to be contracted with or permit to be contracted with, any person for a wage less than that established by the Labor Commissioner pursuant to the provisions of this section.

NRS 608.260 then authorizes private civil actions by employees to recover back minimum wage within a two-year limitation:

> **NRS 608.260 Action by employee to recover difference between minimum wage and amount paid; limitation of action.** If any employer pays any employee a lesser amount than the minimum wage prescribed by regulation of the Labor Commissioner pursuant to the provisions of NRS 608.250, ***the employee may, at any time within 2 years, bring a civil action to recover the difference between the amount paid to the employee and the amount of the minimum wage.*** A contract between the employer and the employee or any acceptance of a lesser wage by the employee is not a bar to the action. [Emphasis added.]

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[16] Both the Minimum Wage Amendment and NRS 608.250(1) require that the minimum wage be adjusted or set by federal law. Federal minimum wage has been $7.25 an hour since 2009. App. 17.

NRS 608.260's two-year limitation for back-wage claims is consistent with NRS 608.115, "Records of Wages," which at subsection (3) imposes on employers a two-year record maintenance obligation:

> **NRS 608.115 Records of wages.**
> 1. Every employer shall establish and maintain records of wages for the benefit of his or her employees, showing for each pay period the following information for each employee:
> (a) Gross wage or salary other than compensation in the form of:
> (1) Services; or
> (2) Food, housing or clothing.
> (b) Deductions.
> (c) Net cash wage or salary.
> (d) Total hours employed in the pay period by noting the number of hours per day.
> (e) Date of payment.
> 2. The information required by this section must be furnished to each employee within 10 days after the employee submits a request.
> 3. ***Records of wages must be maintained for a 2-year period following the entry of information in the record.*** [Emphasis added.]

In 2006, Nevada voters added the Minimum Wage Amendment, Article XV, Sec. 16, to the Nevada Constitution, stating in pertinent part:

> **Payment of minimum compensation to employees.**
> A. Each employer shall pay a wage to each employee of not less than the hourly rates set forth in this section. The rate shall be five dollars and fifteen cents ($5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents ($6.15) per hour if the employer does not provide such benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer. These rates of wages shall be adjusted by the amount of increases in the federal

minimum wage over $5.15 per hour, or, if greater, by the cumulative increase in the cost of living. The cost of living increase shall be measured by the percentage increase as of December 31 in any year over the level as of December 31, 2004 of the Consumer Price Index (All Urban Consumers, U.S. City Average) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency. No CPI adjustment for any one-year period may be greater than 3%. The Governor or ***the State agency designated by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1***....

B. The provisions of this section may not be waived by agreement between an individual employee and an employer.... ***An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section***, including but not limited to back pay, damages, reinstatement or injunctive relief....

C. As used in this section, 'employee' means any person who is employed by an employer as defined herein but does not include an employee who is under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days. 'Employer' means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts of employment.

D. If any provision of this section is declared illegal, invalid or inoperative, in whole or in part, by the final decision of any court of competent jurisdiction, the remaining provisions and all portions not declared illegal, invalid or inoperative shall remain in full force or effect, and no such determination shall invalidate the remaining sections or portions of the sections of this section. [Emphasis added.]

Thomas's invalidation of the exceptions from the minimum wage in NRS 608.250(2) recognized the voters' intent to bring additional Nevada employees into the minimum wage fold and that goal would not be well-served by confusing the

limitations for back-wage claims with two applicable periods – two years for workers previously covered by NRS 608.250 and four years for workers covered as a result of NRS 608.250(2)'s invalidation by *Thomas*. It is more rational that *Thomas*, the Minimum Wage Amendment and NRS Chapter 608 be construed consistently as applying a two-year statute of limitations in ***all*** actions for back minimum wage, whether or not instituted by persons previously excluded by NRS 608.250(2) from the minimum wage. It is also more rational that the limitation of actions match the record retention period for employment records.[17]

B. EVEN WITH THE MINIMUM WAGE AMENDMENT, THE NEVADA LABOR COMMISSIONER STILL SETS AND ANNOUNCES NEVADA'S MINIMUM WAGE

The District Court's reading of NRS 608.260 as inapplicable to claims by employees previously excepted by NRS 608.250(2) from the minimum wage is far too narrow. Both before and after the addition of the Minimum Wage Amendment to Nevada law, the Labor Commissioner calculated and announced Nevada's minimum wage. App. 16 and 17. Thus, subsection (A) to the Minimum Wage Amendment states in part that "The Governor of the State agency designated by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1." *See* App. 16. The Governor and the State of

[17] In App. 2 at pages 43-44, Judge Bell said that the wage record retention statute would not have made a difference to her decision on the statute of limitations. *See* App. 8, p. 164.

Nevada Department of Business & Industry, Office of the Labor Commissioner have proceeded under this arrangement, with the most recent Labor Commissioner's Biennial Report to the Governor and the Legislature Pursuant to NRS 607.080, dated July 1, 2014, explaining at p. 2 with reference to the Minimum Wage Amendment:

> **Minimum Wage Calculation**
>
> Pursuant to Article 15, Section 16(A) of the Nevada Constitution, the Governor of the State agency designated by the Governor must calculate the State minimum wage annually and publish a bulletin announcing the adjusted rates, if any, by April 1 of each year. The new rates, if any, go into effect the following July 1.
>
> The Office of the Labor Commissioner is the agency designated by the Governor to make the minimum wage calculation each year and publish the bulletin by announcing the rates. This is a duty this office takes very seriously as we understand the impact the determination of minimum wage has on the Nevada economy.
>
> In 2014, the minimum wage rates for the State of Nevada did not increase from the year before. Presently, minimum wage in Nevada is $7.25 for workers offered qualified health insurance and $8.25 for workers without employer-provided health insurance.[18]

On March 31, 2015, the Office of the Nevada Labor Commissioner released its annual bulletin stating there was no change in the minimum wage from its 2014 rate, again referencing the Labor Commissioner's duties with respect to setting the minimum wage:

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[18] Exhibit 10, p. 401, to App. 11, Reply in Support of Motion for Reconsideration of Portion of This Court's June 16, 2015 Decision and Order. *See also*, App. 16, 3/28/07 Governor's Designation, stating: "Pursuant to the Nevada Constitution Article 15, Section 16, I hereby designate the Department of Business and Industry, Office of Labor Commission as the agency designated to determine any adjustments to the minimum wage and to publish a bulletin by April 1 of each year announcing the adjusted minimum wage rates, which shall take effect the following July 1."

> The Office of the Labor Commissioner today released the annual bulletins for Nevada's minimum wage and daily overtime requirements that will take effect July 1, 2015. The 2006 Minimum Wage Amendment to the Nevada Constitution requires the minimum wage to be recalculated and adjusted each year based on increases in the federal minimum wage, or, if greater, by the cumulative increase in the cost of living.
>
> The rates will remain unchanged from the previous year. The minimum wage for employees who receive qualified health benefits from their employers will remain at $7.25 per hour; the minimum wage for employees who do not receive health benefits will remain at $8.25 per hour.[19]

Because the Federal minimum wage calculation is not a two-tier one, but a single tier system, the Nevada Labor Commissioner's retained authority is apparent. For example, the one dollar differential used in the Minimum Wage Amendment -- $5.15 an hour with health benefits and $6.15 an hour without health benefits, now $7.25 and $8.25 an hour – may be subject to necessary adjustment at some time in the future if the minimum wage keeps increasing and the differential expands. For example, the difference between $5.15 and $6.15 is 17.699 percent, while the difference between $7.25 and $8.25 is 12.90 percent. But, if the difference rises to, for example, $11.25 and $12.25 per hour, there is only an 8.51 percent difference, less than half the percent difference between the rage rates at the start. Would the Labor Commissioner have authority to readjust the differential between the two rates

[19] 3/31/15 Annual Bulletin of the Office of the Nevada Labor Commissioner, App. 14.

to approximate the original percent of difference or were the two wage rates always to remain $1 apart, even as the percent difference increased or decreased?

Because the minimum wage in Nevada is still set and announced by the Nevada Labor Commissioner and has been since June 25, 2007 (App. 17, p. 458), the District Court's distinction between employees previously excepted from receipt of minimum wage under NRS Chapter 608.250(2) is inapplicable and the two-year limitation of NRS 608.260 should be applied in all back minimum wage cases, whether or not brought by employees previously excepted from the minimum wage under NRS 608.250. NRS 608.260 should be applied as the effective statute of limitations to claims brought by any Nevada employee entitled to the minimum wage in the wake of the Minimum Wage Amendment and this Court's decision in *Thomas*.

C. ANY IMPLIED REPEAL OF NRS 608.260 IS UNNECESSARY

Terry v. Sapphire/Sapphire Gentlemen's Club, 130 Nev. Adv. Op. 87, 335 P.3d 951, 954-55 (2014), applied many of the provisions of NRS Chapter 608 in determining that exotic dancers were employees despite their employer's categorization of them as independent contractors not entitled to minimum wage. *Terry* explained that the Minimum Wage Amendment had not supplanted the entirety of NRS Chapter 608, stating in part:

> Only an 'employee' is entitled to minimum wages under NRS Chapter 608. NRS 608.250, ***superseded in part by constitutional amendment*** *as recognized* in *Thomas v. Nev. Yellow Cab Corp.*, 130 Nev. __, 327 P.3d 518 (2014)....

* * *

> In 2006, Nevada voters provided a new baseline minimum wage law, Article 15, Section 16 of Nevada's Constitution (the Minimum Wage Amendment), and a definition of 'employer' to accompany that platform. This definition does not control the analysis here – the performers do not raise their right to minimum wages under the Minimum Wage Amendment; and though this court has recognized that the text of ***the Minimum Wage Amendment supplants that of our statutory minimum wage laws to some extent***, *see Thomas v. Nev. Yellow Cab Corp.*, 130 Nev. __, ___, 327 P.3d 518, 522 (2014) (holding that "[t]he text of the Minimum Wage Amendment ... supersedes and supplants the taxicab driver exception set out in NRS 608.250(2)"), the Department of Labor continues to use the definition of "employer" found in NRS 608.011, not that in the Minimum Wage Amendment. NAC 608.070. Still, because of the overlap between the Minimum Wage Amendment and NRS Chapter 608, the Minimum Wage Amendment's definition of employer could be instructive, were it not equally, if not more, tautological than NRS 608.011.... Thus, apart from signaling this state's voters' wish that more, not fewer, persons would receive minimum wage protections,..., the Minimum Wage Amendment offers little elucidation.... [Emphasis added.]

Id.

Thus, this Court has interpreted NRS 608.250 as having been ***partially superseded*** by the Minimum Wage Amendment and NRS Chapter 608 as still having application where not specifically supplanted by the constitutional Minimum Wage Amendment. *Thomas* only addressed subsection (2) of NRS 608.250, leaving subsections (1) and (3). As a result, there is no reason to turn to the four-year catch-all statute of limitations, NRS 11.220, when the two-year statute of limitations provided in NRS 608.260 for recovery of back wages serves the purpose of preserving a harmonious worker benefits statutory scheme, with two-year limits

applicable to all wage claims and to employers' obligations to preserve wage and other employment related records.

Under Nevada law, the implied repeal of a statute is "heavily disfavored" and unjustified in this case. *Washington v. State*, 117 Nev. 735, 30 P.3d 1134, 1137 (2001) (this Court "will not consider a statute to be repealed by implication unless there is no other reasonable construction of the two statutes."); *Thomas v. Nevada Yellow Cab Corp.*, 130 Nev. Adv. Op. 52, 327 P.3d 518, 521 (2014), *citing State v. Glusman*, 98 Nev. 412, 419, 651 P.2d 639, 644 (1982) (statutes will be construed "if reasonably possible, so as to be in harmony with the constitution"); *Presson v. Presson*, 38 Nev. 208, 208, 147 P. 108, 1082 (1915) (implied repeal is disfavored); *Western Realty Co. v. City of Reno*, 63 Nev. 330, 344, 172 P.2d 158, 165 (1946) (*quoting Ronnow v. City of Las Vegas*, 63 Nev. 330, 344, 172 P.2d 158, 165 (1956) ("Where express terms of repeal are not used, the presumption is always against an intention to repeal an earlier statute...."). "Implied repeals of statutes by later constitutional provisions [are] not favored and... in order to produce a repeal by implication the repugnancy between the statute and the Constitution must be obvious or necessary." *In re Advisory Op. to the Governor*, 132 So.2d 163, 169 (Fla. 1961).

The Minimum Wage Amendment does not refer to NRS 608.260 and there is no indication that when Nevada voters considered the proposed constitutional

amendment in 2004 and 2006, they were informed that they might be deemed to have repealed or amended NRS 608.260's two-year time limit from initiating a court case. The continued viability of NRS 608.260 is not defeated by either the Minimum Wage Amendment or *Thomas* as NRS 608.260 and the Minimum Wage Amendment do not conflict:

NRS 608.260	**Minimum Wage Amendment**
If any employer pays any employee a lesser amount than the minimum wage prescribed by regulation of the Labor Commissioner pursuant to the provisions of NRS 608.250, ***the employee may, at any time within 2 years, bring a civil action to recover the difference between the amount paid to the employee and the amount of the minimum wage....*** [Emphasis added.]	.... ***An employee claiming violation of this section may bring an action*** against his or her employer in the courts of this State to enforce the provisions of this section ***and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay***, damages, reinstatement or injunctive relief..... [Emphasis added.]

Time limits for employee suits to recover back minimum wage is not mentioned in the Minimum Wage Amendment and NRS 608.260's two-year limitation is fair and rational, particularly in light of NRS 608.115(3)'s direction that employers retain employment records for two years. *Thomas*'s analysis of Constitutional superiority over a conflicting legislative enactment does not determine this issue. It is irrational to impose the four-year catch-all statute of limitations on claims for back minimum wage when there is a two-year statute applicable to that claim. The Supreme Court's invalidation of NRS 608.250(2)'s exception for certain categories of workers only expands the category of Nevada workers entitled to

minimum wage and should not also wreak unnecessary havoc to a two-year scheme for minimum wage claims.

D. THE SEVERABILITY DOCTRINE REQUIRES THE COURT TO UPHOLD NRS 608.260 INSOFAR AS POSSIBLE

Both the judicial and legislative branches of government recognize that statutes should not be invalidated absent constitutional offense. Thus, NRS 0.020, added in 1975, provides:

> **Severability**
>
> 1. If any provision of the Nevada Revised Statutes, or the application thereof to any person, thing or circumstance is held invalid, ***such invalidity shall not affect the provisions or application of NRS which can be given effect without the invalid provision or application, and to this end the provisions of NRS are declared to be severable.***
>
> 2. The inclusion of an express declaration of severability in the enactment of any provision of NRS or the inclusion of any such provision in NRS, does not enhance the severability of the provision so treated or detract from the severability of any other provision of NRS. [Emphasis added.]

The Nevada Supreme Court has long embraced the "severance doctrine" as part of its inherent authority. For example, *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 515, 217 P.3d 546, 555-56 (2009), affirms that only the unconstitutional portions of the Indoor Air Act statutory scheme be stricken, explaining:

> Under the severance doctrine, ***it is "the obligation of the judiciary to uphold the constitutionality of legislative enactments where it is possible to strike only the unconstitutional portions."*** *Rogers v. Heller*, 117 Nev. 169, 177, 18 P.3d 1034, 1039 (2001) (quotation omitted.) This court has adopted a two-part test for

> severability: ***a statute is only severable if the remaining portion of the statute, standing alone, can be given legal effect, and if the Legislature intended for the remainder of the statute to stay in effect when part of the statute is severed.*** *County of Clark v. City of Las Vegas,* 92 Nev. 323, 335-37, 550 P.2d 779, 788 (1976). [Emphasis added.]

More than a century earlier, the Court explained this doctrine in *State ex rel. Attorney General v. Harris*, 19 Nev. 222, 8 P. 462, 463 (1885):

> ***An unconstitutional provision will not invalidate an entire enactment of the legislature, unless the obnoxious portion is so inseparably connected with the others that it cannot be presumed the legislature would have passed the one without the other.*** "It is true," said the supreme court in California, in *Lathrop v. Mills*, 19 Cal. 530, "that ***the constitution merely inderdicts acts which oppose its provisions, and that if any act there be found a provision which is constitutional, that provision may be carried out***, provided the excepted provision is entirely disconnected from the vicious portions of the act, and the legislature is presumed to intend that, notwithstanding the invalidity of the other parts of the act, still this particular section shall stand. The saving of the particular provision, even when not upon its face unconstitutional, in such instances is therefore a matter of legislative intent. In order to sustain the excepted clause, we must intend that the legislature, knowing that the other provisions of the statute would fail, still willed that this particular section should stand as the law of the land." [Emphasis added.]

NRS 608.250(2) is the only part of the statute held unconstitutional by *Thomas*. The rest of the statute and statutory scheme must be preserved to the extent possible. *United States v. Beko*, 88 Nev. 76, 88, 493 P.2d 1324, 1331 (1972) (court had authority to sever unconstitutional exemption in tax statute if severance did not invalidate entire statute); *Desert Chrysler-Plymouth, Inc. v. Chrysler Corp.*, 95 Nev. 640, 642, 600 P.2d 1189, 1192 (1979) (*citing* both NRS 0.020 and the courts'

inherent authority to determine "whether the remainder" of a statutory scheme under attack as unconstitutional could "stand independently and whether the Legislature would have intended it to do so."). *Desert Chrysler* concluded that severability saved significant portions of the statutory scheme:

> In this case, it is clear that the legislation is separable and that the Legislature would have intended severance. The remaining sections of chapter 295 define unfair business practices and provide for civil penalties when these laws are violated.... Such legislation is divisible from that which imposes a licensing function on the district court. Furthermore, since it was the intent of the Legislature to enact a law that regulated motor vehicle franchises, ***it must be presumed that the Legislature would have intended that the remaining portion of the act be severable from the invalid provisions***.

Id. (Emphasis added.)

The application of the severability doctrine to statutes and parts of statutes is a fundamental part of basic U.S. law. *See Loeb v. Trustees of Columbia Township*, 179 U.S. 472, 489-90 (1900) ("As one section of a statute may be repugnant to the Constitution without rendering the whole act void, so, one provision of a section may be invalid by reason of its not conforming to the Constitution, while all the other provisions may be subject to no constitutional infirmity. ***One part may stand, while another will fall***, unless the two are so connected, or dependent on each other in subject-matter, meaning, or purpose, that the good cannot remain without the bad." (emphasis added)); *Cash America International v. Bennett*, 35 S.W.3d 12, 22 (Tex. 2000) ("When a part of a statutory scheme is unconstitutional, ***a court should sever***

out the unconstitutional aspects and save the balance of the scheme if 'other provisions or applications of the statute... can be given effect without the invalid provision or application'" (emphasis added)); *Commissioner v. Lawyer Discipline v. Benton*, 980 S.W.2d 425, 551 (Tex. 1998) ("The ***unconstitutionality of one part of a statute does not require us to invalidate the entire statute*** unless the unconstitutional provision is not separable from the remainder" (emphasis added)); *Bach v. County of St. Clair*, 576 N.E.2d 1236, 1241 (Ill. App. 1995) ("[T]he ***invalidity of that one section does not mandate invalidation of all of Chapter 42***. The ***invalidity of one part of a statute does not affect the validity of the remainder*** unless it is clear that the legislature would not have enacted the law without the invalid portion" (emphasis added)).

Thomas does not require or even suggest any reason why the two-year statute of limitations NRS 608.260 would be constitutionally repugnant to the Minimum Wage Amendment and fall with NRS 608.250(2)'s fate. Under well-settled Nevada law, the two-year statute of limitations should be enforced as it stands as it is not repugnant to the Minimum Wage Amendment.

E. THE TWO-YEAR RECORDS RETENTION STATUTE SUPPORTS THE CONTINUED APPLICABILITY OF NRS 608.260'S TWO YEAR STATUTE OF LIMITATIONS

None of plaintiffs' constitutional rights are impaired by enforcement of the two-year time limit of the statute, but rather enforced under it. This conclusion is

further supported by NRS 608.115's requirement that employers maintain records of wages for a 2-year period. The Minimum Wage Amendment is also consistent with NAC 608.140, added by the Labor Commissioner to the Administrative Code effective August 25, 2004 –before the first vote on the Constitutional Amendment -- and clarifying an employer's duties under NRS 608.115's duties:

> **Provision of records of wages to employee.** (NRS 607.160, 608.115) Within 10 days after a request by an employee, an employer shall provide ***the records of wages required to be kept by the employer pursuant to NRS 608.115*** to the employee, including, but not limited to, an employee that is paid by salary, piece rate or any other wage rate. [Emphasis added.]

As pointed out above, the Nevada Supreme Court has long concluded that "[if] the constitutional provision is ambiguous, we look to the history, public policy, and reason for the provision," concluding that "***the interpretation of a … constitutional provision will be harmonized with other statutes.***" [Emphasis added.] *Landreth v. Malik*, 127 Nev. Adv. Op. 16, 251 P.3d 163, 166 (2011), *citing We the People v. Secretary of State*, 124 Nev. 874, 881, 192 P.3d 1166, 1171 (2008) ("[W]hen possible, ***the interpretation of a*** statute or ***constitutional provision will be harmonized with other statutes or provisions to avoid unreasonable or absurd results***" (emphasis added)).

As a natural result of these longstanding precepts, Nevada acknowledges a "***presumption… against implied repeal unless*** the enactment conflicts with existing law to the extent that ***both cannot logically coexist.***" [Emphasis added.] *Thomas*,

supra, 327 P.3d at 521, *citing Western Realty*, *supra*, 63 Nev. at 344, 172 P.2d at 165. To avoid invalidation of statutes "***every favorable presumption and intendment' must be employed in favor of the statute's constitutionality.***" [Emphasis added.] *Glusman, supra*, 98 Nev. at 419-20, 651 P.2d at 644; and *id.*, further explains:

> We have long recognized, as a general principle, that ***statutes should be construed, if reasonably possible, so as to be in harmony with the constitution***. *Copeland v. Woodbury*, 17 Nev. 337, 30 P. 1006 (1883); cited with approval in *Milchem Inc. v. District Court*, 84 Nev. 541, 445 P.2d 148 (1968). In the face of attack, ***every favorable presumption and intendment will be brought to bear in support of constitutionality.*** As previously held, ***'[a]n act of the legislature is presumed to be constitutional and should be so declared unless it appears to be clearly in contravention of constitutional principles.'*** *State ex rel. Tidvall v. Eighth Judicial District Court*, 91 Nev. 520, 526, 539 P.2d 456, 460 (1975). [Emphasis added.]

In considering statutory challenges, the "***statutes are presumed to be valid***, and the burden is on the challenger to make a ***clear showing of their unconstitutionality***." [Emphasis added.] *Paschall v. State*, 116 Nev. 911, 914, 8 P.3d 851, 852-53 (2000). As a result, "it is axiomatic that '[w]here the language of a statute is plain and unambiguous, and its meaning is clear and unmistakable, ***there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself.***'" [Emphasis added.] *Id.*; *see also Sheriff, Clark County v. Luqman*, 101 Nev. 149, 155, 697 P.2d 107, 111 (1985) ("Where the intention of the legislature is clear, it is the duty of the court to give effect to such

intention and to construe the language of the statute to effectuate, rather than to nullify, its manifest purpose.").

Record retention provisions of other employment or fair wage statutory schemes have been considered significant evidence of what statute of limitations should be applied. For example, *Jones v. Tracy School District*, 611 P.2d 441, 443-44 (Cal. 1980), concludes that a two-year records retention requirement had real meaning – to prevent the prosecution of claims where records and witnesses were no longer available -- with regard to the statutory scheme's two-year limitation for recovery of back wages:

> The section, read as a whole, demonstrates a legislative intent to limit back pay recovery to two years. ***It is significant that subdivision (d) requires all employers to keep records of wages and job classifications for only two years.*** As explained below, ***this requirement discloses a legislative intent to limit recovery of back wages in the manner sought by respondent.***
>
> ***The relationship between the two-year record-keeping requirement of subdivision (d) and the limitations period set forth in subdivision (h) becomes apparent when these provisions are viewed in the light of the important purpose served by the statute of limitations, namely, 'to prevent the assertion of stale claims by plaintiffs who have failed to file their action until evidence is no longer fresh and witnesses are no longer available.'*** (Addison v. State of California (1978) 21 Cal.3d 313, 317, 146 Cal.Rptr. 224, 226, 578 P.2d 941, 942-43; People v. Universal Film Exchanges (195) 34 Cal.2d 649, 659, 213 P.2d 697.) By reason of the operation of subdivision (d), documentary evidence may be lacking to support or defend against claims of discrimination occurring more than two years before the initiation of an action for back wages, while less stale claims, in all probability, will be well documented. ***Surely the Legislature would not have imposed only a two-year record retention requirement had it intended to permit unlimited recovery***

> ***in wage discrimination cases.*** Thus, in order to harmonize the various provisions of section 1197.5, ***we read the two-year limit of subdivision (h) as both a filing requirement and a limitation upon recovery***. [Emphasis added.]

Based on the same logic, *Barajas v. Bermudez*, 43 F.3d 1251, 1260 (9th Cir. 1994), reverses the district court's application of a one-year statute of limitations to claims under the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA") where there was a three-year document retention requirement, which the Ninth Circuit deemed appropriate to afford protection to both workers and employers:

> One important component of the AWPA statutory scheme is disclosure. As the House Report on the AWPA bill emphasized, 'the duty to provide truthful information shall be a duty which runs throughout the period beginning with recruitment and extending until the point that the records required to be maintained need no longer be maintained.' H.R. Rep. No. 97-885, 9th Cong. 2d Sess. 16.... The statute carries forward this purpose.... These provisions not only require that employers provide comprehensive information to workers, concerning the terms of their employment, but also that they 'make, keep and preserve records *for three years*...' pertaining to hours worked, piecework units earned, wages, pay period earnings, specific sums withheld, and net pay for each worker. ***The three-year record retention requirement would be eviscerated were the private right of action...limited by a one-year statute of limitations*** (the one-year limit, of course, would apply not only to aggrieved workers but also to employers seeking to exercise their AWPA right to obtain employment data on workers who previously had worked for other contractors....) [Emphasis supplied.]

To harmonize the three-year record retention statute with the claims limitation, the Ninth Circuit borrowed the state's three-year limitation for actions on oral contracts:

"[W]e would decline to borrow the one-year limitations period ... in light of the three-year record retention requirements of the AWPA and its remedial and humanitarian purposes." *Id.*

Section B of the Minimum Wage Amendment confirms the existing right of employees to sue to recover back minimum wage, but does not contain a statute of limitations. By the Supreme Court's decision in *Thomas*, cab drivers were removed from the exception to minimum wage and therefore are within the group of employees covered by the Constitution and NRS 608. Under such circumstances, it is unfair, irrational, unreasonable and beyond the logical intendment of both the Legislature and the Nevada electorate to conclude that an employee's claim for back wages under the Minimum Wage Amendment would be subject to the State's longer catch-all statute of limitations – for "Action[s] for relief not otherwise provided for" -- as opposed to the specific two-year limitation stated in NRS Chapter 608, governing "Compensation, Wages and Hours" and consistently providing a two-year limitations for employee wage claims and employer's record retention. There is no support in the Minimum Wage Amendment, NRS Chapter 608, NAC Chapter 608, or any Nevada Supreme Court decision to read the limitations period of NRS 608.260 out of Nevada law and instead use the catch-all – "for relief not otherwise provided for" -- statute of limitations. This Court should conclude, as it did in *Glusman*, *supra*, 98 Nev. at 423, 651 P.2d at 646, that the "statute here challenged is

constitutional on its face" and that, as in *Jones*, *supra*, and *Barajas*, *supra*, the limitations for actions and record-keeping are rationally related and must be read together.

V. CONCLUSION

This petition for a writ of mandamus or prohibition raises legal issues of Constitutional magnitude affecting many Nevada employers and employees. Public trust in the executive, legislative and judicial branches of government – each of whom has a part in this dispute – is not served by inconsistent or irreconcilable applications of employment laws to different categories of employees. Nor does it make sense for employers to have different record-retention obligations for different categories of employees, *e.g.*, two years for office staff or cab maintenance and four years for drivers. The current state of confusion as to what statute of limitations governs a claim for back minimum wage, whether pursued by employees previously

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excepted from application of the minimum wage or not, should be resolved to the benefit of all Nevada employers and employees.

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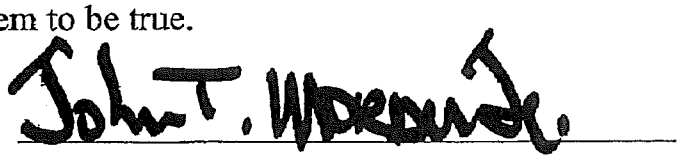
VERIFICATION

Under penalties of perjury, I, John Moran, Jr., General Counsel for Petitioner Western Cab Company, hereby declare that Western Cab Company is the petitioner named in the foregoing petition; that I know the contents thereof; that the information in the Petition is true of my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.



JOHN MORAN, JR.

General Counsel, Western Cab Company

CERTIFICATE OF SERVICE

The undersigned does hereby certify that pursuant to NRAP 25(c), a true and correct copy of the foregoing **PETITION FOR WRIT OF MANDAMUS OR PROHIBITION** was filed electronically with the Nevada Supreme Court Electronic Filing System, and a copy was served electronically on this 10th day of September, 2015, to the following:

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And a true and correct copy of the foregoing **PETITION FOR WRIT OF MANDAMUS OR PROHIBITION** was served via first class, postage-paid U.S. Mail on this 10th day of September, 2015, to the following:

The Honorable Linda Marie Bell
District Court Judge
Eighth Judicial District Court of Nevada
200 Lewis Avenue, #3B
Las Vegas, NV 89101

Rosalie Garcia

An Employee of Hejmanowski & McCrea LLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESTERN CAB COMPANY, Petitioner, vs. EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for the COUNTY OF CLARK; and THE HONORABLE LINDA MARIE BELL, District Judge, Respondents, and LAKSIRI PERERA, Individually and on behalf of others similarly situated, Real Party in Interest.	**Case No.:** _____ District Court Case No. A-14-707425-C

PETITIONER'S APPENDIX IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS OR PROHIBITION

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