

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3  
4   JEFF MYERS, individually and on  
5   behalf of others similarly situated,

6                                   Appellant,

7   vs.

8   RENO CAB COMPANY, INC.

9                                   Respondent.

10   \_\_\_\_\_/

11   ARTHUR SHATS and RICHARD  
12   FRATIS, individually and on behalf of  
13   others similarly situated,

14                                  Appellants,

15   vs.

16   ROY L. STREET, individually and dba  
17   CAPITOL CAB,

18                                  Respondent.

19   \_\_\_\_\_/

20                                   **RESPONDENTS' ANSWERING BRIEF**

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## NRAP 26.1 DISCLOSURE

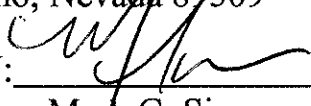
The undersigned counsel of record certifies that the following are persons and entities described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the justices of this Court may evaluate possible disqualifications or recusal.

1. Respondent Reno Cab Company, Inc. is a Nevada corporation (“Reno Cab”). No publicly held company owns any portion of this entity’s stock.
2. Respondent Roy L. Street is an individual doing business as Capitol Cab Company (“Street”).

The undersigned counsel Mark G. Simons of SIMONS HALL JOHNSTON PC appeared in these proceedings on behalf of Reno Cab and Street.

DATED this 5<sup>th</sup> day of August, 2020.

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1 **NRAP 17 ROUTING STATEMENT<sup>1</sup>**

2 Pursuant to NRAP 28(a)(5), Reno Cab and Street (hereinafter jointly  
3 referred to as “Reno Cab” unless otherwise specified) agree that resolution of this  
4 appeal presents a number of issues of first impression and has statewide  
5 application.  
6

7  
8 First, NRS 706.473 defines a lessee of a taxicab as an “independent  
9 contractor” in counties with populations of less than 700,000 if certain additional  
10 statutory and administrative criteria are met.<sup>2</sup> Appellants contend that Nevada’s  
11 Constitution, Article 15, Section 16, commonly known as the Minimum Wage  
12 Amendment (the “MWA”), which applies solely to “employees”, should be  
13 interpreted so as to include these statutorily defined “independent contractors.”  
14

15  
16 The application of NRS 706.473’s “independent contractor” status in  
17 relation to the MWA’s application to “employees” is an issue of first impression.  
18 In addition, this appeal raises “a principal issue a question of statewide public  
19

20  
21 <sup>1</sup> Respondents do not include a separate Jurisdictional Statement.

22 <sup>2</sup> In Yellow Cab of Reno v. District Court, 127 Nev. 583, 592, 262 P.3d 699,  
23 704 (2011) this Court addressed the NRS 706.473 statutorily defined independent  
24 contractor relationship in the context of a respondeat superior claim, albeit not in a  
25 minimum wage context, and held: “**NRS 706.473 specifically authorizes the  
26 licensing of a taxicab to an independent contractor if the requirements of that  
statute and any administrative regulations promulgated in accordance with  
NRS 706.475 are met.**” (emphasis added).

1 importance” because this statute’s protections apply in all counties with  
2 populations of less than 700,000.<sup>3</sup> Even more encompassing, this appeal will have  
3 broad repercussions in Nevada since the “independent contractor” relationship  
4 versus an “employment” relationship pervades all levels of Nevada’s business  
5 environment and implicates NRS 608.255(2)’s provisions stating that the MWA  
6 does not apply to “independent contractor” relationships.<sup>4</sup>  
7

9 Appellants contend that NRS 706.473’s statutory definition of an  
10 “independent contractor”, and the Legislature’s mandate that “independent  
11 contractors” are not subject to the MWA per NRS 608.255(2), should simply be  
12 ignored. Instead, Appellants contend that the only criteria courts should employ in  
13 evaluating whether a person is an independent contractor or an employee is the  
14 federal “economic realities” test this Court adopted in Terry v. Sapphire  
15 Gentleman’s Club, 130 Nev. 879, 336 P.3d 952 (2014).  
16  
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19 <sup>3</sup>NRS 706.473(1) (“In a county whose population is less than 700,000, a  
20 person who holds a certificate of public convenience and necessity which was  
21 issued for the operation of a taxicab business **may, upon approval from the**  
22 **Authority, lease a taxicab to an independent contractor . . . .**” (emphasis  
23 added)).

24 <sup>4</sup>NRS 608.255 states: “**For the purposes of this chapter and any other**  
25 **statutory or constitutional provision governing the minimum wage paid to an**  
26 **employee, the following relationships do not constitute employment**  
**relationships and are therefore not subject to those provisions: . . . 2. The**  
**relationship between a principal and an independent contractor.”** (Emphasis  
added).



1           The Nevada Legislature enacted the laws contained in NRS Chapter  
2 706.473.<sup>6</sup> Pursuant to its legislative authority, the Legislature also enacted the  
3 enabling laws creating and establishing the operating protocols for the NTA. NRS  
4 706.1511. It was the Legislature, not the NTA, that created the statutorily defined  
5 “independent contractor” relationship for lessees of taxicabs in counties with  
6 populations less than 700,000 contained in NRS 706.473. In addition, the  
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11 service, and to foster sound economic conditions in motor transportation. The  
12 NTA encourages the establishment and maintenance of reasonable charges for  
13 intrastate transportation by fully regulated carriers and non-consent towing  
14 services.”). The Court can take judicial notice of the NTA’s Mission Statement  
15 contained on the Nevada Department of Business and Industry’s NTA website.  
16 Fierle v. Perez, 125 Nev. 728, 737, 219 P.3d 906, 912 fn. 6 (2009) (court may take  
17 judicial notice of facts capable of “accurate and ready determination by resort to  
18 sources whose accuracy cannot reasonably be questioned” and other matters of  
19 public record) (*overruled on other grounds* Egan v. Chambers, 129 Nev. 239, 299  
20 P.3d 364 (2013)).

21           <sup>6</sup> In 1993, the Legislature enacted NRS 706.473 to address the financial  
22 hardships being experienced by cab companies in Northern Nevada. *See Minutes*  
23 *of the Senate Committee On Transportation regarding S.B. 561, 67th Leg., June*  
24 *29, 1993, available at*  
25 [https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1993/SB5](https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1993/SB561,1993.pdf)  
26 [61,1993.pdf](https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1993/SB561,1993.pdf) (last visited August 3, 2020). Of significance, Robert Crowell  
testified in support of the bill on the behalf of Reno Cab, explaining that the  
statute was designed to “rectify a severe problem that the northern Nevada cab  
companies are experiencing.” *Id.* (testimony of Robert Crowell in support of S.B.  
561). In other words, Reno Cab is not just within the general class of entities the  
Nevada Legislature had in mind when it enacted NRS 706.473—legislators  
specifically contemplated that Reno Cab would enter into independent contractor  
agreements pursuant to the statute.

1 Legislature was fully empowered to authorize the NTA to adopt regulations to  
2 enforce NRS 706.473's provisions.  
3

4 Therefore, the independent contractor relationship is not premised on the  
5 NTA's action. The NTA merely regulates certain of the requirements needed to  
6 establish the statutorily created independent contractor relationship. In this  
7 instance, the NTA's approval of the independent contractor lease agreements is  
8 undisputed and the Appellants do not contest the NTA's approval of the lease  
9 agreement. Instead, this appeal focuses on the authority of the Nevada Legislature  
10 to enact laws defining the "independent contractor" business relationship.  
11  
12

13 Accordingly, the properly phrased issue is as follows:

14 Issue 1: Does the Nevada Legislature have the authority to statutorily  
15 define who is an "independent contractor", and therefore, not an  
16 "employee" subject to the MWA?  
17

18 Reno Cab believes the foregoing statement correctly frames the first issue on  
19 appeal. Reno Cab accepts the second issue as framed by Appellants.  
20

21 ///

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23 ///

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1 **STATEMENT OF THE CASE<sup>7</sup>**

2 The MWA does not apply to an independent contractor. The MWA and  
3 Nevada’s minimum wage laws (NRS Chapter 608) apply only to “employees”. At  
4 its core, this case requires this Court to determine if the Legislature may enact laws  
5 defining an independent contractor relationship. If so, then this appeal must be  
6 denied, and the district court’s orders affirmed.  
7

8  
9 Interestingly, this case presents the unique intersection of: (1) a  
10 constitutional provision confirming a minimum wage for an “employee” (*i.e.*, the  
11 MWA); (2) statutory provisions creating an “independent contractor” relationship  
12 for the Appellants (*i.e.*, NRS 706.473); (3) the Legislature’s enactment of NRS  
13 608.255(2) stating that the MWA does not apply to “independent contractor”  
14 relationships; and (4) the law of contracts, (*i.e.*, application of the law of contracts  
15 in the analytical process of determining the independent contractor relationship).  
16  
17 As this brief demonstrates, in this setting, the Legislature has the authority to  
18 define an “independent contractor” business relationship. Further, the Legislature  
19 is vested with the authority to declare that an independent contractor relationship  
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25 \_\_\_\_\_  
26 <sup>7</sup> For ease of reading, this section will omit appendix citations, but citations  
will be provided for factual statements in the body of the brief.

1 does not create an employer/employee relationship subject to the MWA as stated  
2 in NRS 608.255(2).  
3

4 In addition, the Legislature, as the branch of the government vested with the  
5 power to enact laws, is fully empowered to enact laws that abrogate and/or  
6 supersede decisions rendered by the Nevada Supreme Court.<sup>8</sup> Therefore, when the  
7 Legislature enacted NRS Chapter 608.0155's conclusive presumption of an  
8 independent contractor relationship, the Legislature's conduct was a valid and  
9 appropriate exercise of its authority superseding the judicial adoption of the  
10 "economic realities" test in Terry v. Sapphire Gentleman's Club. Lastly,  
11 independent of NRS 706's and 608's provisions, application of the law of contracts  
12 requires this Court to rule as a matter of law that Appellants are independent  
13 contractors.  
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16

17 On the other hand, the Appellants believe the Court should ignore NRS  
18 706.473 and 608.255(2), should ignore the Legislature's role in government to  
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21  
22 <sup>8</sup> It is unclear if Legislature's action in enacting NRS 706.473 "abrogated"  
23 the judicial adoption of the economic realities test or "superseded" the test or even  
24 whether this distinction is even material. *See e.g., First Fin. Bank v. Lane*, 130  
25 Nev. 972, 978, 339 P.3d 1289, 1293 (2014) ("This court will not read a statute to  
26 abrogate the common law . . ."); *Jacobson v. Estate of Clayton*, 121 Nev. 518,  
522, 119 P.3d 132, 134 (2005) ("NRS 140.040(3), as amended, supersedes our  
decision in *Bodine*.").

1 enact laws and should ignore the law of contracts defining the parties as  
2 independent contractors. Instead, the Appellants argue that there is only a single  
3 test to be employed in Nevada to analyze each and every independent contractor  
4 versus employee relationship dispute—via the “economic realities” test from  
5 Terry. To further this argument, Appellants contend the Legislature is not  
6 empowered to enact laws superseding or abrogating a prior Court decision.  
7  
8 Therefore, the Appellants contend the Legislature’s enactment of NRS 608.0155,  
9 implementing the independent contractor conclusive presumption test, cannot  
10 abrogate the “economic realities” test previously adopted by this Court. As Reno  
11 Cab’s brief will demonstrate, the Appellants’ appeal lacks merit and should be  
12 denied.  
13  
14

### 15 **PROCEDURAL BACKGROUND**

16  
17 This appeal arises from a district court order granting summary judgment in  
18 favor of Reno Cab in the consolidated actions. The Appellants Jeff Myers, Arthur  
19 Shatz and Richard Fratis (hereinafter “Taxi Drivers”) all leased taxicabs from Reno  
20 Cab under an independent contractor lease agreement. Taxi Drivers subsequently  
21 brought suit alleging, that despite the clear and unambiguous language of their  
22 independent contractor agreement, and despite NRS 706.473’s clear application,  
23 they were nonetheless employees of Reno Cab under the “economic realities” test.  
24  
25  
26



1 Reno Cab moved for summary judgment, asserting that the “economic  
2 realities” test was abrogated and superseded by the Nevada Legislature’s  
3 enactment of NRS 608.0155. The district court agreed and entered summary  
4 judgment on this issue and held that the Nevada Legislature’s “conclusive  
5 presumption” test embodied in NRS 608.0155 was the new test applicable to an  
6 independent contractor versus employee status disputes.<sup>9</sup> II JA 401-415.  
7  
8

9 Subsequently, Reno Cab moved for summary judgment on the grounds that  
10 the Taxi Drivers were independent contractors as a matter of law pursuant to the  
11 provisions of NRS Chapter 706.473. The district court agreed and found because  
12 all the statutory and regulatory requirements contained in NRS 706.473 were  
13 satisfied, the Taxi Drivers were independent contractors as a matter of law. III JA  
14 600 (“Because all statutory and administrative requirements have been satisfied,  
15 the Plaintiffs are independent contractors as a matter of law.”). Taxi Drivers have  
16 appealed both orders of the district court.  
17  
18

### 19 **FACTUAL BACKGROUND**

20 The following facts are undisputed.  
21  
22  
23  
24

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25 <sup>9</sup> The application of NRS 706.473 was also raised in Reno Cab’s initial  
26 motion for summary judgment, however, the district court did not address its  
application at that time. II JA 413, fn.6.

1           1.     The population in both Washoe County and Carson City, individually,  
2 is less than 700,000 people. III JA 593:15-16.

3  
4           2.     The taxicab lease agreements were executed between the Taxi Drivers  
5 and Reno Cab and Street. Id. 593:16-17.

6           3.     The Taxi Drivers each signed individual Lease Agreements (the  
7 “Leases”). Id. 593:17-18.

8  
9           4.     The NTA approved the Leases. Id. 593:19.

10           5.     Reno Cab and Street each held the appropriate Certificate of Public  
11 Convenience and Necessity (“CPCN”) allowing these parties to enter into the  
12 Leases. Id. 593:19-21.

13  
14           6.     The Taxi Driver’s Leases all contain the same identical relevant  
15 provisions defining the Taxi Driver’s as independent contractors as follows:

16  
17                   RELATIONSHIP. Neither Party is the partner, joint  
18 venturer, agent, or representatives of the other Party. **LESSEE is an**  
19 **independent contractor. LEASING COMPANY and LESSEE**  
20 **acknowledge and agree that there does not exist between them**  
21 **the relationship of employer and employee, principal and agent,**  
22 **or master and servant, either expressed or implied, but that of the**  
23 **parties is strictly that of lessor and lessee, the LESSEE being**  
24 **free from interference or control on the part of the LEASING**  
25 **COMPANY, except as otherwise provided in chapter 706 of the**  
26 **NRS and/or NAC, in the operation of the Leased Taxicab.**

III JA 437-38 (emphasis added); *see also* III JA 472-473; 487-488; 502-503.

7.     Further, the Leases identify that the Taxi Drivers are not eligible for

1 federal or state unemployment or workman’s compensation benefits and that Reno  
2 Cab is not responsible for any income withholding taxes since that responsibility  
3 is solely upon the Taxi Drivers. Id.

5 8. In addition, the Leases confirm that the Taxi Drivers agreed “**to lease**  
6 **a taxicab from the LEASING COMPANY pursuant to NRS 706.473.**” III JA  
7 438-439 (emphasis added).

9 9. Importantly, the Taxi Drivers admit that they were fully compensated  
10 as independent contractors according to the terms of the Leases, however, they  
11 brought this action claiming they should have been paid as employees. III JA.  
12 439:22-23.<sup>10</sup>

### 14 SUMMARY OF THE ARGUMENT

15 The primary issue on appeal is whether the Legislature can define an  
16 independent contractor relationship. If such a relationship exists, then the MWA is  
17 not implicated because no employee/employer relationship exists. Stated another  
18 way, the MWA and NRS Chapter 608’s provisions only apply when there is an  
19 employment relationship. Nev. Const. Art. 15, §16 (“Each employer shall pay a  
20 wage to each employee . . . .”); *see also Terry v. Sapphire Gentlemen's Club*, 130  
21 Nev. 879, 882, 336 P.3d 951, 954 (2014) (“Only an ‘employee’ is entitled to  
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26 <sup>10</sup> Of note, even though the underlying captions contained reference to the  
named plaintiffs brining suit on behalf of a class, no class certification was sought.

1 minimum wages under NRS Chapter 608.”). *Compare* NRS 608.255(2) (“The  
2 relationship between a principal and an independent contractor” “do[es] not  
3 constitute [an] employment relationship[] . . .”).  
4

5 NRS 706.473 unmistakably establishes a statutorily defined independent  
6 contractor relationship. In Yellow Cab of Reno v. District Court, 127 Nev. 583,  
7 592, 262 P.3d 699, 704 (2011) this Court affirmed that NRS 706.473 is a  
8 “statutorily created independent contractor relationship”. Because the existence of  
9 the NRS 706.473 independent contractor relationship was established by  
10 undisputed facts, the district court correctly held the Taxi Drivers were  
11 independent contractors as a matter of law, stating:  
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14 The use of the term “employee” in the MWA and NRS 608.040 is not  
15 mere semantics; rather, it reflects a fundamental employment distinction.  
16 As independent contractors, the Plaintiffs are foreclosed from recovery  
17 under the MWA and NRS 608.040 as a matter of law.

18 III JA 600:10-12.

19 Further, the district court correctly held that the Legislature’s enactment of  
20 NRS 608.0155 was an appropriate act in response to this Court’s decision in Terry.  
21 And, pursuant to the Legislature’s authority, the Legislature was fully empowered  
22 to enact NRS 608.0155’s independent contractor test superseding and/or  
23 abrogating this Court’s adoption of the economic realities test.  
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1           Lastly, under the old economic realities test, a contract entered into by and  
2 among parties was merely one of many factors in determining if an independent  
3 contractor relationship existed. Because Nevada no longer adheres to the  
4 economic realities test, under the application of the law of contracts, the Leases  
5 terms stating that the Taxi Drivers are independent contractors are conclusive and  
6 binding as a matter of law.  
7  
8

9   **ARGUMENT**

10          **I.     STANDARD OF REVIEW.**

11           This Court “reviews the district court’s grant of summary judgment de novo,  
12 without deference to the findings of lower court.” Schettler v. RalRon Capital  
13 Corp., 128 Nev. 209, 214, 275 P.3d 933, 936 (2012) (quoting Wood v. Safeway,  
14 Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005)).  
15  
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17           In addition, since this appeal involves constitutional and statutory  
18 interpretation, such matters are also subject to de novo review. In Harvey v.  
19 Second Judicial Dist. Court, 117 Nev. 754, 763, 32 P.3d 1263, 1269 (2001) the  
20 Court “recognized that the rules of statutory construction apply when we interpret  
21 constitutional provisions.” Id. This Court reviews questions of constitutional and  
22 statutory construction under a de novo standard. W. Cab Co. v. Eighth Judicial  
23 Dist. Court of State in & for Cty. of Clark, 133 Nev. 65, 73, 390 P.3d 662, 670–71  
24 (2017) (“We review questions of constitutional interpretation de novo.”); Waste  
25  
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1 Mgmt. of Nevada, Inc. v. W. Taylor St., LLC, 135 Nev. 168, 170, 443 P.3d 1115,  
2 1117 (2019) (“We review questions of statutory construction de novo.”).  
3

4 **II. THE DISTRICT COURT CORRECTLY APPLIED NRS 706.473**  
5 **FINDING THE TAXI DRIVERS WERE INDEPENDENT**  
6 **CONTRACTORS AS A MATTER OF LAW.**

7 **A. YELLOW CAB OF RENO V. DISTRICT COURT:**  
8 **RECOGNITION OF NRS 706.473’S INDEPENDENT**  
9 **CONTRACTOR RELATIONSHIP.**

10 In 2011, this Court rendered its decision in Yellow Cab of Reno v. District  
11 Court, 127 Nev. 583, 262 P.3d 699 (2011) addressing the application of NRS  
12 706.473’s provisions in the context of a personal injury action. In Yellow Cab, a  
13 pedestrian brought an action against both the driver and Yellow Cab, arguing that  
14 Yellow Cab was liable for the acts of the driver under the theory of respondeat  
15 superior. Id. at 586, 262 P.3d at 700. Yellow Cab moved for summary judgment,  
16 arguing that the driver of the taxi was an independent contractor under NRS  
17 706.473, therefore, respondeat superior liability could not attach to Yellow Cab as  
18 a matter of law. Id.  
19  
20

21 The pedestrian claimed, just like the Taxi Drivers here, that Yellow Cab  
22 supposedly exerted a “high level of control” over the driver, such that an  
23 employment relationship existed regardless of the provisions of NRS 706.473. Id.  
24 at 586, 262 P.3d at 701. The district court determined that the driver’s independent  
25 contractor status was a question of fact due to Yellow Cab’s “control” over the  
26

1 driver and denied Yellow Cab’s motion for summary judgment. *Id.* The district  
2 court failed, however, to address Yellow Cab’s NRS 706.473 argument. *Id.*  
3

4 In considering Yellow Cab’s subsequent writ petition,<sup>11</sup> this Court stated that  
5 although an employment relationship “typically” depends on the issue of control,  
6 such analysis was irrelevant and inapplicable given NRS 706.473’s provisions.  
7  
8 This Court held if the statute’s provisions are established, then an independent  
9 contractor relationship existed as a matter of law:

10  
11 NRS 706.473 specifically authorizes the licensing of a taxicab  
12 to an independent contractor if the requirements of that statute and  
13 any administrative regulations promulgated in accordance with NRS  
14 706.475 are met. Thus, under the statutory scheme, **the existence of  
15 this statutorily created independent contractor relationship turns  
16 not on the issue of control, but on whether all of the statutory and  
17 administrative requirements for creating such an independent  
18 contractor relationship have been established.**

19 *Id.* at 591-92, 262 P.3d at 704 (emphasis added).

20 This Court held because the issue was fully briefed, “the district court  
21 should have determined whether, in this case, all of the statutory and  
22 administrative requirements for creating an NRS 706.473 independent-contract  
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24 <sup>11</sup>The NTA submitted an amicus brief in support of Yellow Cab. *Id.* at 588  
25 n.3, 262 P.3d at 701 n.3. This is critical because the lease agreement in Yellow  
26 Cab is virtually identical to the Leases in the present case. III JA 444, fn. 13; *see*  
*also* III JA 524-533. The NTA’s position in Yellow Cab was a clear recognition  
of the Leases’ validity under NRS 706.473.

1 relationship between [the driver] and Yellow Cab have been met.” Id. at 592, 262  
2 P.3d at 705. Thus, while this Court ultimately denied Yellow Cab’s writ petition  
3  
4 on procedural grounds, it did so “without prejudice to the district court re-  
5 evaluating the propriety of summary judgment regarding Yellow Cab’s NRS  
6 706.473-based independent contractor argument in light of the analysis set forth in  
7  
8 this opinion.” Id. 593, 262 P.3d at 705.<sup>12</sup>

9       Accordingly, it is clear that NRS 706.473’s provisions establish a statutorily  
10 defined independent contractor relationship. Because the requirements of that  
11 statutory relationship are undisputedly established, the Taxi Drivers are  
12 independent contractors as a matter of law. The MWA does not apply to  
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17       <sup>12</sup> Of minor note, the Court in Yellow Cab declined to address the separate  
18 issue of whether the existence of a statutorily-created independent contractor  
19 relationship bars respondeat superior liability. Id. at 592 n.6, 262 P.2d at 705 n.6.  
20 Reno Cab asserts this is a minor issue and easily resolved by consideration of  
21 well-established Nevada law holding respondeat superior liability cannot exist for  
22 the conduct of an independent contractor. As stated in Wells, Inc. v. Shoemaker,  
23 64 Nev. 57, 64, 177 P.2d 451, 456 (1947): “The law is well established beyond  
24 question, that one for whom services are performed by an independent contractor  
25 is not liable for the negligence or other delict or tort of such independent  
26 contractor.” *See also* Hanneman v. Downer, 110 Nev. 167, 175, 871 P.2d 279,  
284 (1995) (no respondeat superior liability for conduct of an independent  
contractor); Molina v. Asher, 96 Nev. 814, 817, 618 P.2d 878, 880 (1980)  
 (“Respondeat superior liability attaches only when the employee is under the  
control of the employer and when the act is within the scope of the  
employment.”).



1 independent contractors so this appeal must be denied and the district court's  
2 orders affirmed.

3  
4 **B. THE TAXI DRIVERS' CLAIMS ARE FORECLOSED BY**  
5 **APPLICATION OF NRS 706.473.**

6 **1. LEGISLATURE'S AUTHORITY TO ENACT LAWS**  
7 **GOVERNING THE TAXI CAB INDUSTRY.**

8 "During its 1969 session, the legislature enacted NRS 706.881 to NRS  
9 706.885, which sets forth requirements for the operation of taxicabs in counties  
10 whose population exceeds 200,000. On October 25, 1972, Clark County's  
11 population exceeded 200,000." Lamb v. Mirin, 90 Nev. 329, 332, 526 P.2d 80, 81  
12 (1974). In 1972, Las Vegas's McCarran Airport Rules precluded "double loading"  
13 of passengers in taxi cabs, however, NRS Chapter 706's provisions specifically  
14 allowed "double loading". Id. In 1972, the Clark County Sheriff's department  
15 seized William Mirin's taxi driver's permit for violating the double loading  
16 provision of McCarran Airport's Rules. Id.

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20 In Lamb v. Mirin, this Court addressed the conflict between the power of the  
21 Legislature and the power of local governments to regulate a particular subject  
22 matter, and stated:  
23

24 Whenever a legislature sees fit to adopt a general scheme for the  
25 regulation of particular subject, local control over the same subject, through  
26 legislation, ceases. In determining whether the legislature intended to  
occupy a particular field to the exclusion of all local regulation, the Court

1 may look to the whole purpose and scope of legislative scheme.

2 Id. The Court then went on to further state:

3  
4 Chapter 706 of NRS is the latest expression by the legislature on the  
5 subject, and has superseded any inconsistent provisions of prior legislative  
6 enactments. . . . NRS Chapter 706 has preempted the field with respect to  
7 taxicab regulations . . . .”

8 Id. at 333, 526 P.2d at 82. Accordingly, since the late 1960’s, the Legislature has  
9 been passing laws regulating the taxi industry, including the subsequent creation  
10 and enactment of the NTA, and has been ensuring the protection of the  
11 independent contractor business relationship in Nevada’s less-populous counties.

12 **2. NRS 706.473’S PLAIN MEANING.**

13  
14 “Statutory language must be given its plain meaning if it is clear and  
15 unambiguous.” Badger v. District Court, 132 Nev. 396, 401, 373 P.3d 89, 93  
16 (2016). “When giving a statute’s terms their plain meaning, [courts] will consider  
17 the statute’s ‘provisions as a whole so as to read them in a way that [will] not  
18 render words or phrases superfluous or make a provision nugatory.’” Libby v.  
19 District Court, 130 Nev. 359, 363-64, 325 P.3d 1276, 1279 (2014) (*quoting S.*  
20 Nev. Homebuilders Ass’n v. Clark County, 121 Nev. 446, 449, 117 P.3d 171, 173  
21 (2005)). NRS 706.473’s provisions are plain and clear and must be enforced as  
22 written.  
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1                                   **3.     NRS 706.473 PRESUMED VALID.**

2                                   Further, laws “are presumed to be valid, and the burden is on the challenger  
3  
4 to make a clear showing of their unconstitutionality.” Douglas Disposal, Inc. v.  
5 Wee Haul, LLC, 123 Nev. 552, 557, 170 P.3d 508, 512 (2007) (internal quotation  
6 marks omitted); *see also* We The People Nevada v. Miller, 124 Nev. 874, 881, 192  
7 P.3d 1166, 1171 (2008) (“A presumption of validity” is given to the  
8 constitutionality of a statute); Nevadans for Nevada v. Beers, 122 Nev. 930, 939,  
9 142 P.3d 339, 345 (2006) (“statutes are presumed to be valid, and the challenger  
10 bears the burden of showing that a statute is unconstitutional. In order to meet that  
11 burden, the challenger must make a clear showing of invalidity.”). In the present  
12 case, the Taxi Drivers do not articulate in any fashion how NRS 706.473 is  
13 unconstitutional or in any other manner is an inappropriate exercise of the  
14 Legislature’s authority.  
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18                                   **4.     THE LEASES COMPLY WITH NRS 706.473.**

19                                   NRS 706.473(1) provides, in pertinent part, in counties of less than  
20 700,000, a person who holds a certificate of public convenience and necessity  
21 issued for the operation of a taxicab business “may, upon approval from the  
22 Authority, lease a taxicab to an independent contractor . . . .” This statute also  
23 provides the NTA is charged “approving” the independent contractor lease  
24 agreement’s compliance with the statutory and regulatory requirements. NRS  
25  
26

1 706.473(2).

2 NRS 706.475, in turn, states that the NTA “shall adopt such regulations as  
3 are necessary to . . . [c]arry out the provisions of NRS 706.473,” including “[t]he  
4 minimum qualifications for an independent contractor.”<sup>13</sup> In Yellow Cab, this  
5 Court recognized the validity, applicability and enforceability of this statute when  
6 it held: “NRS 706.473 specifically authorizes the licensing of a taxicab to an  
7 independent contractor if the requirements of that statute and any administrative  
8 regulations promulgated in accordance with NRS 706.475 are met.” Yellow Cab,  
9 127 Nev. at 592, 262 P.3d at 704.<sup>14</sup>

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<sup>13</sup> NRS 706.475 states:

1. The Authority shall adopt such regulations as are necessary to:
  - (a) Carry out the provisions of NRS 706.473; and
  - (b) Ensure that the taxicab business remains safe, adequate and reliable.
2. Such regulations must include, without limitation:
  - (a) The minimum qualifications for an independent contractor;
  - (b) Requirements related to liability insurance;
  - (c) Minimum safety standards; and
  - (d) The procedure for approving a lease agreement and the provisions that must be included in a lease agreement concerning the grounds for the revocation of such approval.

<sup>14</sup> Certain provisions relating to the NTA’s oversight are contained in the Nevada Administrative Code (the “NAC”). “The [NAC] is the codified administrative regulations of the Executive Branch of the State of Nevada. . . [and] govern the activities of the Department of Administration and its divisions. *See* State of Nevada, Department of Administration website: [http://admin.nv.gov/NAC/#:~:text=The%20Nevada%20Administrative%20Code%](http://admin.nv.gov/NAC/#:~:text=The%20Nevada%20Administrative%20Code%20)

1 Stated another way, NRS 706.473 defines a specific and unique relationship  
2 that the Legislature has stated is, “as a matter of law”, an independent contractor  
3 relationship. This Court expressly recognized that the Legislature is vested with  
4 such authority. Yellow Cab, 127 Nev. at 592, 262 P.3d at 704 (“the existence of  
5 this statutorily created independent contractor relationship turns not on the issue  
6 of control, but on . . . the statutory and administrative requirements for creating  
7 such an independent contractor relationship . . .”).  
8

9  
10 The district court found Reno Cab satisfied all statutory and regulatory  
11 requirements creating the independent contractor relationship as a matter of law.  
12 III JA 600; *see also* III JA 519-522 (chart detailing Leases’ compliance with all  
13 legal and regulatory requirements). It was also undisputed that Reno Cab and  
14 Street are taxicab businesses operating in Washoe County and Carson City,<sup>15</sup> both  
15 of which have populations well below 700,000, according to the 2010 Census.<sup>16</sup>  
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19 \_\_\_\_\_  
20 20(NAC,of%20Administration%20and%20its%20divisions (last visited August 5,  
21 2020).

22 <sup>15</sup>See NRS 0.033 (“Whenever used in the Statutes of Nevada and Nevada  
23 Revised Statutes, the term ‘county’ includes Carson City. . . . Except as limited by  
24 the Charter of Carson City or by ordinances enacted by authority thereof, those  
25 provisions of the Statutes of Nevada or Nevada Revised Statutes which refer to  
26 the several counties apply equally to Carson City.”).

<sup>16</sup>See NRS 0.050 (“Except as otherwise expressly provided in a particular  
statute or required by the context, ‘population’ means the number of people in a  
specified area as determined by the last preceding national decennial census

1 III JA 598. In addition, Reno Cab and Street each hold CPCNs, and held CPCNs  
2 at all relevant times. III JA 598-99. And, finally, the Leases were approved by  
3 the NTA. III JA 599; *see also* III JA 466, 468.  
4

5 It is in this setting that the district court found that the Leases contained all  
6 the relevant statutory and regulatory components of NRS 706.473 and the  
7 corresponding NAC provision. III JA 599. The district court then appropriately  
8 granted summary judgment in favor of Reno Cab finding:  
9

10 Because all statutory and administrative requirements have been  
11 satisfied, the Plaintiffs are independent contractors as a matter of law. As  
12 such, the protections afforded to “employees” in the Minimum Wage  
13 Amendment (“the MWA”) and NRS 608.040 do not apply. . . . The use of  
14 the term “employee” in the MWA and NRS 608.040 is not mere semantics;  
15 rather it reflects a fundamental employment distinction. As independent  
16 contractors, the Plaintiffs are foreclosed from recovery under the MWA and  
17 NRS 608.040 as a matter of law.

18 III JA 600. Because the facts were undisputed and the district court correctly  
19 applied the law, this Court should affirm the district court’s determination that  
20 NRS 706.473’s “independent contractors” are not as a matter of law “employees”  
21 subject to the MWA or NRS Chapter 608’s provisions.<sup>17</sup>  
22  
23

24 \_\_\_\_\_  
25 conducted by the Bureau of the Census of the United States Department of  
26 Commerce . . .”).

<sup>17</sup> NRS 608.255(2) (“The relationship between a principal and an independent contractor” exempt from NRS 608’s scope).

1           **C.     THE LEGISLATURE’S AUTHORITY TO ENACT LAWS**  
2           **DEFINING AN INDEPENDENT CONTRACTOR**  
3           **RELATIONSHIP.**

4           In an attempt to circumvent the application of this statute, the Taxi Drivers  
5 argue that NRS 706.473 improperly grants the NTA the power to define  
6 employment for minimum wage purposes. OB, p. 7. This assertion misstates the  
7 statute. The Nevada Legislature defined the independent contractor relationship  
8 and defined the parameters and regulation of that relationship. The NTA is not  
9 defining the independent contractor relationship in any fashion, the Nevada  
10 Legislature is and the NTA is merely administering the laws properly enacted.  
11  
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13           The Legislature is vested with the authority to enact laws defining business  
14 relationships and the rights and obligations of the parties under the law. For  
15 instance, the Legislature has created and defined employees (NRS 608.100);  
16 independent contractors (NRS 706.473); private corporations (NRS Chapter 780);  
17 close corporations (NRS Chapter 78A); limited liability companies (NRS Chapter  
18 86); general partnerships (NRS Chapter 87); and limited partnerships (NRS 87A  
19 and 88). In addition, the Legislature has carved out other professions from  
20 qualifying as an “employee” under Nevada law.<sup>18</sup>  
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25           <sup>18</sup> As just one example, the Legislature has created a statutory exemption  
26 from Nevada’s unemployment compensation provisions for licensed real estate  
sales persons. *See e.g.*, NRS 612.133 (“Employment’ shall not include services

1 The Legislature’s enactment of NRS 706.473 falls squarely within the  
2 Legislature’s authority. Halverson v. Hardcastle, 123 Nev. 245, 260–61, 163 P.3d  
3 428, 440 (2007) (legislative power “refers to the broad authority to enact, amend,  
4 and repeal laws” and judicial branch cannot exercise legislative power). The  
5 Legislature defined the independent contractor relationship by statute, not the  
6 NTA. Yellow Cab, 127 Nev. at 591-92, 262 P.3d at 704 (NRS 706.473 is a  
7 “statutorily created independent contractor relationship”). Because the  
8 Legislature properly exercised its legislative authority by enacting a statutorily  
9 defined independent contractor relationship, the Taxi Driver’s arguments fail.  
10  
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12

13 **D. THE LEGISLATURE’S AUTHORITY TO DELEGATE**  
14 **APPLICATION AND OPERATION OF A STATUTE.**

15 To the extent the Taxi Drivers argue that the NTA is performing certain  
16 administrative activities, it is also well-established the Legislature may delegate  
17 administrative authority to an administrative agency such as the NTA. Delegating  
18 such administrative authority has been repeatedly recognized as appropriate and  
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21  
22 performed by a licensed real estate salesman or licensed real estate broker who is  
23 employed as a salesman or associate broker by another licensed real estate broker,  
24 whether such services are performed for such employer or for a third person, if  
25 such services are performed for remuneration solely by way of commission.”).  
26 This Court has not hesitated to enforce such statutes. Nevada Employment Sec.  
Dept. v. Capri Resorts, Inc., 104 Nev. 527, 529, 763 P.2d 50, 52 (1988) (time share  
employees were “not employees as contemplated by the unemployment  
compensation statutes”).



1 valid by this Court.

2 For instance, in Sheriff, Clark Cty. v. Luqman, 101 Nev. 149, 153–54, 697  
3 P.2d 107, 110 (1985), the complaining party argued that the Legislature’s act in  
4 authorizing the state pharmacy board to classify drugs was improper as such  
5 legislation “impermissibly delegates legislative authority to an administrative  
6 agency.” In rejecting such contention, and in upholding the Legislature’s act, this  
7  
8 Court stated:  
9

10 Although the legislature may not delegate its power to legislate, it  
11 may delegate the power to determine the facts or state of things upon which  
12 the law makes its own operations depend. . . . Thus, the legislature can  
13 make the application or operation of a statute complete within itself  
14 dependent upon the existence of certain facts or conditions, the  
15 ascertainment of which is left to the administrative agency. . . . In doing so  
16 the legislature vests the agency with mere fact finding authority and not the  
17 authority to legislate. . . . The agency is only authorized to determine the  
18 facts which will make the statute effective. . . . Such authority will be  
19 upheld as constitutional so long as suitable standards are established by the  
20 legislature for the agency's use of its power. These standards must be  
21 sufficient to guide the agency with respect to the purpose of the law and  
22 the \*154 power authorized.

23 Id. Accordingly, the Legislature is fully empowered to delegate to an  
24 administrative agency “the power” and responsibility to perform and/or oversee  
25 “facts or state of things” upon which the application of the law depends.  
26

27 In the present instance, the Nevada Legislature declared that its purpose and  
28 policy in enacting NRS Chapter 706 was “to make it the duty of the [NTA] to  
29 regulate [and] enforce the provisions of this chapter and the regulations adopted by

1 the [NTA] pursuant to it.” NRS 706.151(1)(a). Further, “[a]ll of the provisions of  
2 [NRS Chapter 706] must be administered and enforced with a view to carrying out  
3 the declaration of policy contained in this section.” NRS 706.151(2).

4  
5 Crucially, the Legislature delegated authority to the NTA to review and  
6 approve independent contractor agreements between taxi companies and drivers to  
7 ensure the Leases, *i.e.*, the “facts or state of things”, complied with the law. NRS  
8 706.473(1). This regulatory function is so vital, and so firmly vested with the  
9 NTA, that such agreements are “not effective until approved by the [NTA],” *see*  
10 NRS 706.473(2), and the NTA is given standing to intervene in an action  
11 “involving a lease agreement entered into pursuant to this section.” NRS  
12 706.473(4). The NTA is also charged with adopting regulations to carry out these  
13 provisions, including enacting procedures for approving, or revoking, such  
14 agreements. NRS 706.475(1)(a), (2)(d).

15  
16 Because administrative agencies are so intertwined and necessary to the  
17 operation and application of Nevada’s laws, this Court has held “the interpretation  
18 by the agency charged with administering a statute is persuasive, and that great  
19 deference should be given to that interpretation if it is within the language of the  
20 statute.” Nevada Tax Comm’n v. Nevada Cement Co., 117 Nev. 960, 968-69, 36  
21 P.3d 418, 423 (2001). Further, courts “must respect the judgment of the agency  
22 empowered to apply the law to varying fact patterns, even if the issue with nearly  
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1 equal reason [might] be resolved one way rather than another.” Malecon  
2 Tobacco, LLC v. State Department of Taxation, 118 Nev. 837, 841-42 n.15, 59  
3 P.3d 474, 477 n.15 (2002) (citation omitted). Merely because the NTA administers  
4 the laws enacted by the Legislature, such administrative action does not invalidate  
5 the NTA or the duties it performs.  
6

7  
8 The Legislature provided suitable guidance to the NTA. The Legislature  
9 directed the NTA to adopt regulations setting forth, among other things, the  
10 minimum qualifications for an independent contractor, the requirements related to  
11 liability insurance, minimum safety standards and the procedure for approving a  
12 lease agreement and the provisions to be included. NRS 706.475(2). Accordingly,  
13 the Legislature did not improperly delegate legislative power to the NTA, instead,  
14 the Legislature provided “suitable standards sufficient” to guide the NTA in  
15 performing its administrative functions. *See e.g., Yellow Cab*, 127 Nev. at 592,  
16 262 P.3d at 704 (“The district court should have determined whether a statutorily  
17 recognized independent contractor relationship, established through compliance  
18 with NRS 706.473 and the regulations promulgated in accordance with NRS  
19 706.475, would allow Yellow Cab to avoid liability under a respondeat superior  
20 analysis.”). Accordingly, the Taxi Driver’s arguments have no merit and the  
21 Legislature’s enactment of NRS 706.473 and delegation of certain operational and  
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1 administrative aspects of the law upon the NTA, falls squarely within the  
2 Legislature's authority.

3  
4 **III. THE ENACTMENT OF NRS 608.0155 ABROGATES THE**  
5 **“ECONOMIC REALITIES” TEST.**

6 The Taxi Drivers also appeal the district court's determination that the  
7 Legislature's enactment of NRS 608.0155 abrogated the “economic realities” test  
8 adopted by this Court in Terry. II JA 401-415. The Taxi Drivers' argument  
9 devolves into the simple proposition that they prefer the judicially created  
10 “economic realities” test to apply to determining their status rather than the  
11 legislatively created independent contractor conclusive presumption test enacted  
12 into law in NRS 608.0155.<sup>19</sup> As discussed herein, the Taxi Drivers' arguments are  
13 without merit.  
14  
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16  
17  
18 <sup>19</sup>NRS 608.0155 states in this regard as follows:

- 19 1. . . . [A] person is conclusively presumed to be an independent  
20 contractor if:
- 21 (a) . . . . the person possesses or has applied for a[]  
22 . . . social security number . . . .;
  - 23 (b) the person is required by the contract with the principal  
24 to hold any necessary state business registration or  
25 local business license and to maintain any necessary  
26 occupational license . . . ; and
  - (c) The person satisfies three or more of the following  
criteria:
    - (1) Notwithstanding the exercise of any control  
necessary to comply with any statutory, regulatory or

1 To place NRS 608.0155 into context, this statute was enacted in response to  
2 this Court’s 2014 decision in Terry v. Sapphire Gentlemen’s Club, 130 Nev. 879,  
3 336 P.3d 951 (2014). In Terry, the plaintiffs urged this Court to adopt the federal  
4 economic realities test as an “interpretive aid” in determining what constituted an  
5 “employee” under the MWA since Nevada’s statutes and the MWA did not contain  
6 sufficient “concrete” assistance. Id. at 884, 336 P.3d at 955.  
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11 contractual obligations, the person has control and  
12 discretion over the means and manner of the  
13 performance of any work and the result of the work,  
14 rather than the means or manner by which the work is  
performed, is the primary element bargained for by the  
principal in the contract.

15 (2) Except for an agreement with the principal relating  
16 to the completion schedule, range of work hours or, if  
17 the work contracted for is entertainment, the time such  
entertainment is to be presented, the person has control  
18 over the time the work is performed.

19 (3) The person is not required to work exclusively for  
one principal . . .

20 (4) The person is free to hire employees to assist with  
the work.

21 (5) The person contributes a substantial investment of capital  
22 in the business of the person, including, without limitation, the:

23 (I) Purchase or lease of ordinary tools, material and  
equipment regardless of source;

24 (II) Obtaining of a license or other permission from the  
principal to access any work space of the principal to  
25 perform the work for which the person was engaged; and

26 (III) Lease of any work space from the principal required  
to perform the work for which the person was engaged.

1 In Terry, this Court examined the language contained in NRS 608.011 and  
2 the MWA applying to “employer”.<sup>20</sup> In explaining the definition of an employer in  
3 the statute and subsequently in the MWA “offers little elucidation”, the Court  
4 adopted “the economic realities test that federal courts use” in examining  
5 employment relationships. Id. The Court adopted the federal test in the absence of  
6 direction by the Legislature, and to drive this point home, this Court stated:  
7

8  
9 [T]he Legislature has not clearly signaled its intent that Nevada's  
10 minimum wage scheme should deviate from the federally set course, and for  
11 the practical reasons examined above, our state's and federal minimum wage  
12 laws should be harmonious in terms of which workers qualify as employees  
13 under them. We therefore adopt the FLSA's “economic realities” test for  
14 employment in the context of Nevada's minimum wage laws.

15 Id.

16 After the Court’s 2014 ruling in Terry, Nevada’s 78<sup>th</sup> Legislative Session  
17 enacted SB 224 which abrogated and/or superseded the economic realities test for  
18 claims based upon Nevada law. SB 224 was codified at NRS 608.0155 and at  
19 608.255. NRS 608.0155’s provisions reaffirm Nevada’s commitment to honoring  
20 the independent contractor relationship. In addition, NRS 608.0155’s provisions  
21

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22  
23 <sup>20</sup> In Terry, this Court examined the term “employer” in the context of the  
24 employer/employee relationship “[b]ecause NRS 608.010's definition of employee  
25 hinges on NRS 608.011's definition of employer, [therefore] we must decide the  
26 larger issue of when an entity is an employer under NRS 608.011 . . . .” Id. at 881,  
336 P.3d at 953.

1 send a clear and concrete signal that, as a matter of law, certain workers are  
2 conclusively deemed independent contractors—not subject to the MWA or  
3 Nevada’s minimum wage law--when certain factors are established.<sup>21</sup> In addition  
4 to the enactment of NRS 608.0155’s provisions, the Nevada Legislature also  
5 amended NRS 608.255(3) to state that as a matter of law, the “**relationship**  
6 **between a principal and an independent contractor**” does not give rise to an  
7 employment relationship and is not subject to any “**statutory or constitutional**  
8 **provision governing the minimum wage paid to an employee . . . .**” (Emphasis  
9 added).

10  
11  
12  
13 When the Legislature enacts a statute, this Court presumes that it does so  
14 “with full knowledge of existing statutes relating to the same subject.” Nevada  
15 Power Co. v. Haggerty, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999) (*citing*

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16  
17  
18 <sup>21</sup> *See*  
19 <http://www.leg.state.nv.us/App/NELIS/REL/78th2015/Bill/1667/Overview> (last  
20 visited August 4, 2020) (“Section 16 of Article 15 of the Nevada Constitution  
21 defines the term “employee” and requires each employer to pay a certain minimum  
22 wage to each employee. Existing law imposes certain additional requirements  
23 relating to compensation, wages and hours of employees. (Chapter 608 of NRS)  
24 Section 1 of this bill establishes a conclusive presumption that a person is an  
25 independent contractor, rather than an employee, if certain conditions are met.  
26 Section 5 of this bill excludes the relationship between a principal and an  
independent contractor from those relationships that constitute employment  
relationships for the purpose of requiring the payment of a minimum wage.  
Section 7 of this bill applies the provisions of this bill to any action or proceeding  
to recover unpaid wages pursuant to a requirement to pay a minimum wage in  
which a final decision has not been rendered as of the effective date of this bill.”)

1 Runion v. State, 116 Nev. 1041, 1047, 13 P.3d 52, 56 fn.2 (2000)). Similarly, the  
2 Court interprets statutes and constitutional provisions in harmony, not to create  
3 absurd or unreasonable results. We The People Nevada v. Miller, 124 Nev. 874,  
4 881, 192 P.3d 1166, 1171 (2008) (“the interpretation of a statute or constitutional  
5 provision will be harmonized with other statutes or provisions to avoid  
6 unreasonable or absurd results.”).

9 In rendering its decision, the district court correctly applied the foregoing  
10 principals and concluded that the Legislature clearly “signaled” its intention to  
11 deviate from the “economic realities” test by enactment and implementation of  
12 NRS 608.0155. II JA 408-409. The district court also correctly held that under the  
13 separation of powers, the Legislature had the power to enact the laws for the  
14 judiciary to enforce. II JA 409. Thus, when the Legislature enacted NRS  
15 608.0155, abrogating the economic realities test adopted by the judiciary, it did so  
16 pursuant to its authority and that such action was “a purposeful modification of  
17 Nevada’s statutory scheme” made in response to this Court’s opinions. II JA 410.  
18 Because the Legislature is fully vested with the authority to clarify and/or change  
19 the law in response to decisions rendered by this Court, the Taxi Drivers’  
20 arguments fail as a matter of law.  
21  
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26



1 **IV. THE LAW OF CONTRACTS MANDATES TAXI DRIVER'S ARE**  
2 **INDEPENDENT CONTRACTORS.**

3 Under the economic realities test, a contract entered into by and among  
4 parties is merely one of many factors in determining if an independent contractor  
5 relationship exists. Real v. Driscoll Strawberry Assocs., Inc., 603 F.2d 748, 755  
6 (9th Cir. 1979) (“Economic realities, not contractual labels, determine employment  
7 status for the remedial purposes of the FLSA.”). However, as stated above,  
8 Nevada no longer adheres to the economic realities test. Therefore, the terms of  
9 the Leases are not just “a factor” to consider but terms that must be enforced as a  
10 matter of law and are conclusive and binding on the parties under application of  
11 the law of contracts.<sup>22</sup>

12  
13  
14  
15 In an almost identical factual scenario, prior to the enactment of the MWA  
16 and prior to the adoption of the economic realities test, in Kaldi v. Farmers Ins.  
17 Exch., 117 Nev. 273, 278–79, 21 P.3d 16, 19–20 (2001), a plaintiff brought suit  
18  
19  
20

---

21 <sup>22</sup> Although the district court did not expressly address this standalone basis  
22 for ruling in Respondents’ favor, Respondents contend this Court should affirm the  
23 validity and sanctity of the law of contracts in this setting as an additional basis for  
24 judgment in Respondents’ favor. Jaffke v. Dunham, 352 U.S. 280, 281, 77 S. Ct.  
25 307, 308, 1 L. Ed. 2d 314 (1957) (“A successful party in the District Court may  
26 sustain its judgment on any ground that finds support in the record.”); Cockrell v.  
Cockrell, 84 Nev. 537, 539, 445 P.2d 30, 31 (1968) (affirming judgment based  
upon both unpled and pled claims because “[u]nder either theory  
the record supports the judgment of the trial court.”).

1 contending that he was an employee even though he had a written contract stating  
2 he was **not** an employee. In upholding summary judgment for the defendant, this

3  
4 Court held:

5           Kaldi contends that his exclusive agency arrangement with Farmers  
6 created \*\*20 an employer-employee relationship between himself and the  
7 companies. **The plain language of the Agreement does not support**  
8 **Kaldi's assertion.** “It has long been the policy in Nevada that absent some  
9 countervailing reason, contracts will be construed from the written language  
10 and enforced as written.” . . . **Here, provision “I” of the agreement**  
11 **specifically states that Kaldi is not an employee of Farmers and that**  
12 **nothing in the Agreement is intended to create an employee/employer**  
13 **relationship. . . . As the Agreement unambiguously provides that Kaldi**  
14 **was an independent contractor, not an employee, we reject his**  
15 **argument that it created an employment relationship.**

16 Id. (emphasis added) (citations omitted). The Kaldi Court then affirmed the trial  
17 court’s dismissal of the plaintiff’s complaint. Id. at 23.

18           As in Kaldi, the parties’ Leases state the Taxi Drivers are independent  
19 contractors and not employees. Here, the Leases clearly state that the Taxi Drivers  
20 are independent contractors and that nothing contained in the Leases creates an  
21 employer-employee relationship as follows:

22                   RELATIONSHIP. . . . **LESSEE is an independent**  
23 **contractor. LEASING COMPANY and LESSEE acknowledge**  
24 **and agree that there does not exist between them the relationship**  
25 **of employer and employee . . . .**

26 The Court is charged with enforcing the contract as written. Davis v. Beling, 128  
Nev. 301, 320, 278 P.3d 501, 515 (2012) (“the initial focus is on whether the  
language of the contract is clear and unambiguous; if it is, the contract will be

1 enforced as written.”). In addition, when the terms of a written contract are  
2 unambiguous, the interpretation and enforcement of the contract is an issue of law.  
3  
4 Galardi v. Naples Polaris, LLC, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013)  
5 (“contract interpretation presents a question of law . . .”).

6         The plain language of the Leases confirm the Taxi Drivers are independent  
7 contractors. Based upon the clear language of the Leases and based upon the  
8 controlling precedence established in Kaldi, this Court must also find that the Taxi  
9 Drivers are independent contractors regardless of the application of NRS 706.473  
10 or NRS 608.0155. This finding is mandated because this Court has repeatedly  
11 stated, courts have “no authority to alter the terms of an unambiguous contract.”  
12 Hansen v. Edwards, 83 Nev. 189, 192, 426 P.2d 792, 793 (1967). Moreover,  
13 courts are not allowed to “rewrite contract provisions that are otherwise  
14 unambiguous” nor “attempt to increase the legal obligations of the parties where  
15 the parties intentionally limited such obligations.” Griffin v. Old Republic Ins.  
16 Co., 122 Nev. 479, 483, 133 P.3d 251, 254 (2006). Thus, “when a contract is clear  
17 on its face, it ‘will be construed from the written language **and enforced as**  
18 **written.**” Canfora v. Coast Hotels & Casinos, Inc., 121 Nev. 771, 776, 121 P.3d  
19 599, 603 (2005) (emphasis added).

20  
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23  
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25         This Court has observed that the public “has an interest in protecting the  
26 freedom of persons to contract, and in enforcing contractual rights and

1 obligations.” Hansen v. Edwards, 83 Nev. 189, 192, 426 P.2d 792, 793 (1967).

2 This policy to enforce contracts as written finds its genesis in the United States

3  
4 Supreme Court decision Santa Fe, Prescott & Phoenix Ry. Co., 228 U.S. 177, 188

5 (1913), wherein the United States Supreme Court held:

6 [t]here is no rule of public policy which denies effect to their  
7 expressed intention, but, on the contrary, as the matter lies  
8 within the range of permissible agreement, the highest public  
9 policy is found in the enforcement of the contract which was  
actually made.

10 The Leases between the parties clearly and unambiguously provide that the Taxi  
11 Drivers are independent contractors. The Court should enforce public policy,  
12 enforce the parties’ contract and hold, as in Kaldi, that the contracts’ language  
13 governs the parties’ relationship as a matter of contract law.<sup>23</sup>

## 16 CONCLUSION

17 The Taxi Drivers are independent contractors as a matter of application of  
18 either statutory law or contract law. Because they are independent contractors, the  
19 Taxi Drivers are not “employees” subject to the MWA or NRS Chapter 608’s

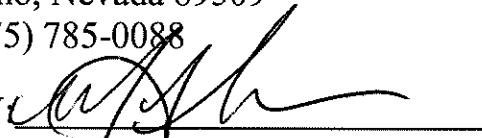
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22 <sup>23</sup> Nevada’s parol evidence rule also bars the Taxi Drivers from attempting to  
23 contradict the terms of the Leases by claiming they are “employees” when the clear  
24 terms of the contracts provide they are independent contractors and not employees.  
25 See Sandy Valley Assocs. v. Sky Ranch Estates Owners Assoc., 117 Nev. 948,  
26 954, 35 P.3d 964, 967-968 (2001) (“Parol evidence is not admissible to vary or  
contradict the clear and unambiguous terms of a written agreement.” (*receded from  
on other ground in* Horgan v. Felton, 123 Nev. 577, 170 P.3d 982 (2007))).

1 provisions. Further, the district court correctly held that the Legislature's  
2 enactment of NRS 608.0155 was an appropriate act in response to this Court's  
3 decision in Terry, and the Legislature was fully empowered to enact NRS  
4 608.0155's independent contractor test superseding and/or abrogating this Court's  
5 adoption of the economic realities test. As such, this appeal should be denied and  
6 the orders of the district court affirmed in all respects.  
7

8  
9 DATED this 5<sup>th</sup> day of August, 2020.

10  
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1 **CERTIFICATE OF COMPLIANCE**  
2 **PURSUANT TO RULE 28.2**

3 1. I hereby certify that this brief complies with the formatting  
4 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and  
5 the type style requirements of NRAP 32(a)(6) because:  
6

7 This brief has been prepared in a proportionally spaced typeface using  
8 Microsoft Word in 14 font and Times New Roman type.  
9

10 2. I further certify that this brief complies with the page- or type-volume  
11 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by  
12 NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or  
13 more, and contains 8585 words.  
14

15 3. Finally, I hereby certify that I have read this brief, and to the best of  
16 my knowledge, information, and belief, it is not frivolous or interposed for any  
17 improper purpose. I further certify that this brief complies with all applicable  
18 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires  
19 every assertion in the brief regarding matters in the record to be supported by a  
20 reference to the page and volume number, if any, of the transcript or appendix  
21 where the matter relied on is to be found. I understand that I may be subject to  
22  
23

24 ///

25 ///

26 ///

1 sanctions in the event that the accompanying brief is not in conformity with the  
2 requirements of the Nevada Rules of Appellate Procedure.

3  
4 DATED this 5<sup>th</sup> day of August, 2020.

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1 CERTIFICATE OF SERVICE

2 Pursuant to NRAP 25, I certify that I am an employee of SIMONS HALL  
3 JOHNSTON PC, and that on this date I caused to be served a true copy of the  
4 **RESPONDENTS' ANSWERING BRIEF** on all parties to this action by the  
5 method(s) indicated below:  
6

7  by using the Supreme Court Electronic Filing System:  
8

9  
10 Leon Greenberg, Esq.  
11 Curtis Coulter, Esq.  
12 *Attorneys for Appellants*

13  
14 DATED: This 5 day of August, 2020.

15  
16   
17 JODI ALHASAN



1 **ADDENDUM**

2  
3 **I. NEVADA CONSTITUTION**

4 **Nev. Const. Art. 15, §16**

5 **Sec. 16. Payment of minimum compensation to employees. [Effective**  
6 **through June 30, 2024, and after that date unless the provisions of Assembly**  
7 **Joint Resolution No. 10 (2019) are agreed to and passed by the 2021**  
8 **Legislature and approved and ratified by the voters at the 2022 General**  
9 **Election.]**

10 A. Each employer shall pay a wage to each employee of not less than the  
11 hourly rates set forth in this section. The rate shall be five dollars and fifteen cents  
12 (\$5.15) per hour worked, if the employer provides health benefits as described  
13 herein, or six dollars and fifteen cents (\$6.15) per hour if the employer does not  
14 provide such benefits. Offering health benefits within the meaning of this section  
15 shall consist of making health insurance available to the employee for the  
16 employee and the employee's dependents at a total cost to the employee for  
17 premiums of not more than 10 percent of the employee's gross taxable income  
18 from the employer. These rates of wages shall be adjusted by the amount of  
19 increases in the federal minimum wage over \$5.15 per hour, or, if greater, by the  
20 cumulative increase in the cost of living. The cost of living increase shall be  
21 measured by the percentage increase as of December 31 in any year over the level  
22 as of December 31, 2004 of the Consumer Price Index (All Urban Consumers, U.S.  
23 City Average) as published by the Bureau of Labor Statistics, U.S. Department of  
24 Labor or the successor index or federal agency. No CPI adjustment for any one-  
25 year period may be greater than 3%. The Governor or the State agency designated  
26 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. Such bulletin will be  
made available to all employers and to any other person who has filed with the  
Governor or the designated agency a request to receive such notice but lack of  
notice shall not excuse noncompliance with this section. An employer shall  
provide written notification of the rate adjustments to each of its employees and  
make the necessary payroll adjustments by July 1 following the publication of the  
bulletin. Tips or gratuities received by employees shall not be credited as being any  
part of or offset against the wage rates required by this section.

B. The provisions of this section may not be waived by agreement between  
an individual employee and an employer. All of the provisions of this section, or  
any part hereof, may be waived in a bona fide collective bargaining agreement, but

1 only if the waiver is explicitly set forth in such agreement in clear and  
2 unambiguous terms. Unilateral implementation of terms and conditions of  
3 employment by either party to a collective bargaining relationship shall not  
4 constitute, or be permitted, as a waiver of all or any part of the provisions of this  
5 section. An employer shall not discharge, reduce the compensation of or otherwise  
6 discriminate against any employee for using any civil remedies to enforce this  
7 section or otherwise asserting his or her rights under this section. An employee  
8 claiming violation of this section may bring an action against his or her employer  
9 in the courts of this State to enforce the provisions of this section and shall be  
10 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 reasonable attorney's fees and  
costs.

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

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

23 [Added in 2006. Proposed by initiative petition and approved and ratified by the  
24 people at the 2004 and 2006 General Elections.]

## 25 **II. NEVADA STATUTES**

26 **NRS 608.255 Relationships which do not constitute employment**  
**relationships for purposes of minimum wage.** For the purposes of this chapter  
and any other statutory or constitutional provision governing the minimum wage  
paid to an employee, the following relationships do not constitute employment  
relationships and are therefore not subject to those provisions:

1. The relationship between a provider of jobs and day training services  
which is recognized as exempt pursuant to the provisions of 26 U.S.C. § 501(c)(3)

1 and which has been issued a certificate by the Division of Public and Behavioral  
2 Health of the Department of Health and Human Services pursuant to NRS  
3 435.130 to 435.310, inclusive, and a person with an intellectual disability or a  
4 person with a developmental disability participating in a jobs and day training  
5 services program.

2. The relationship between a principal and an independent contractor.

3. As used in this section, “developmental disability” has the meaning  
6 ascribed to it in NRS 435.007.

(Added to NRS by 2007, 541; A 2009, 2241; 2013, 698, 3066; 2015,  
7 1744; 2017, 265, 2831)

8  
9 **NRS 706.151 Legislative declaration of purpose.**

1. It is hereby declared to be the purpose and policy of the Legislature in  
10 enacting this chapter:

11 (a) Except to the extent otherwise provided in NRS  
12 706.881 to 706.885, inclusive, to confer upon the Authority the power and to  
13 make it the duty of the Authority to regulate fully regulated carriers,  
14 operators of tow cars and brokers of regulated services to the extent  
15 provided in this chapter and to confer upon the Department of Motor  
16 Vehicles the power to license all motor carriers and to make it the duty of  
17 the Department of Motor Vehicles and the Department of Public Safety to  
18 enforce the provisions of this chapter and the regulations adopted by the  
19 Authority pursuant to it, to relieve the undue burdens on the highways  
20 arising by reason of the use of the highways by vehicles in a gainful  
21 occupation thereon.

22 (b) To provide for reasonable compensation for the use of the  
23 highways in gainful occupations, and enable the State of Nevada, by using  
24 license fees, to provide for the proper construction, maintenance and repair  
25 thereof, and thereby protect the safety and welfare of the traveling and  
26 shipping public in their use of the highways.

(c) To provide for fair and impartial regulation, to promote safe,  
adequate, economical and efficient service and to foster sound economic  
conditions in motor transportation.

(d) To encourage the establishment and maintenance of reasonable  
charges for:

- (1) Intrastate transportation by fully regulated carriers; and
- (2) Towing services performed without the prior consent of the  
owner of the vehicle or the person authorized by the owner to operate

1 the vehicle, Without unjust discriminations against or undue  
2 preferences or advantages being given to any motor carrier or  
3 applicant for a certificate of public convenience and necessity.

4 (e) To discourage any practices which would tend to increase or  
5 create competition that may be detrimental to the traveling and shipping  
6 public or the motor carrier business within this State.

7 2. All of the provisions of this chapter must be administered and enforced  
8 with a view to carrying out the declaration of policy contained in this section.

9 (Added to NRS by 1971, 690; A 1981, 1019; 1983, 1222; 1995, 2612; 1997,  
10 1930, 2670; 1999, 492; 2003, 1400; 2007, 2052)

11 **NRS 706.1511 Authority: Creation; appointment, terms and qualifications**  
12 **of members; restriction on other employment of members; members serve at**  
13 **pleasure of Governor.**

14 1. The Nevada Transportation Authority is hereby created.

15 2. The Authority consists of three members appointed by the Governor.  
16 After the initial term, each member shall serve a term of 4 years.

17 3. The Governor shall appoint to the Authority members who have at least  
18 2 years of experience in one or more of the following fields:

- 19 (a) Accounting.
- 20 (b) Business administration.
- 21 (c) Economics.
- 22 (d) Administrative law.
- 23 (e) Transportation.
- 24 (f) Professional engineering.

25 At least one but not more than two of the members appointed must be residents of  
26 Clark County.

4. Not more than two of the members may be:

- 27 (a) Members of the same political party.
- 28 (b) From the same field of experience.

29 5. All of the members must be persons who are independent of the  
30 industries regulated by the Authority. No elected officer of this State or any  
31 political subdivision is eligible for appointment.

32 6. The members of the Authority shall give their entire time to the business  
33 of the Authority and shall not pursue any other business or vocation or hold any  
34 other office of profit.

35 7. Each member of the Authority serves at the pleasure of the Governor.

36 (Added to NRS by 1997, 1923; A 2007, 2053)

1 **NRS 706.473 Leasing of taxicab to independent contractor: Authorization**  
2 **in certain counties; limitations; approval of agreement; liability for violations;**  
3 **intervention in civil action by Authority.**

4 1. In a county whose population is less than 700,000, a person who holds a  
5 certificate of public convenience and necessity which was issued for the operation  
6 of a taxicab business may, upon approval from the Authority, lease a taxicab to an  
7 independent contractor who does not hold a certificate of public convenience and  
8 necessity. A person may lease only one taxicab to each independent contractor  
with whom the person enters into a lease agreement. The taxicab may be used only  
in a manner authorized by the lessor's certificate of public convenience and  
necessity.

9 2. A person who enters into a lease agreement with an independent  
10 contractor pursuant to this section shall submit a copy of the agreement to the  
11 Authority for its approval. The agreement is not effective until approved by the  
12 Authority.

13 3. A person who leases a taxicab to an independent contractor is jointly  
14 and severally liable with the independent contractor for any violation of the  
provisions of this chapter or the regulations adopted pursuant thereto, and shall  
ensure that the independent contractor complies with such provisions and  
regulations.

15 4. The Authority or any of its employees may intervene in a civil action  
involving a lease agreement entered into pursuant to this section.

16 (Added to NRS by 1993, 2649; A 1997, 1948; 2011, 1312)

17 **NRS 706.475 Leasing of taxicab to independent contractor: Regulations of**  
18 **Authority.**

19 1. The Authority shall adopt such regulations as are necessary to:

20 (a) Carry out the provisions of NRS 706.473; and

21 (b) Ensure that the taxicab business remains safe, adequate and  
reliable.

22 2. Such regulations must include, without limitation:

23 (a) The minimum qualifications for an independent contractor;

24 (b) Requirements related to liability insurance;

(c) Minimum safety standards; and

25 (d) The procedure for approving a lease agreement and the provisions  
that must be included in a lease agreement concerning the grounds for the  
revocation of such approval.

26 (Added to NRS by 1993, 2649; A 1997, 1949)