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### Echeverria (Nathan) v. State, 137 Nev. Adv. Op. (Sept. 16, 2021)

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NEVADA WAIVES SOVEREIGN IMMUNITY DEFENSE UNDER NRS 41.031(1)

**Summary:**

The Nevada Supreme Court considered whether Nevada had waived its sovereign immunity defense for liability under the Fair Labor and Standards Act (FLSA). NRS 41.031(1), states that Nevada waives its immunity from liability and consents to having liability determined through court actions, the same as other people and corporations in the state.<sup>2</sup> The Court held that the clear and unambiguous language of NRS 41.031(1) overcame all the State's arguments and does constitute a waiver of sovereign immunity. Therefore, the State can be sued for violations under FLSA.

**Background:**

This case stems from a class action in which Echeverria and several other employees at the Nevada Department of Corrections (NDOC) sued the State of Nevada for violating the federal FLSA act. Plaintiffs allege that the State required them to work extra hours without compensation, constituting a violation of FLSA, the state Minimum Wage Amendment, and a breach of contract.

The State removed the action to the United States District Court. The district court found that this removal waived the State's sovereign immunity.<sup>3</sup> The Ninth Circuit affirmed this decision for immunity from suit but did not decide if the State retains sovereign immunity from liability.

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<sup>1</sup> By Caitlan McMasters.

<sup>2</sup> NEV. REV. STAT. § 41.031(1) (2020).

<sup>3</sup> *Lapides v. Bd. of Regents of Univ. Sys. of Ga.*, 535 U.S. 613, 616 (2002).

On remand, the employees argued that NRS 41.031(1) waived the State's sovereign immunity from liability. The State contended that the statute waived tort liability, but not statutory liability. The Supreme Court of Nevada granted certiorari to decide whether NRS 41.031(1) waived immunity from nontort liability.

### **Discussion:**

#### **We elect to rephrase the certified question**

The Court elected to remove the phrase "or analogous provisions of state law" from the original certified question. Because there are no pending cases where the State is claiming immunity from state law, if the Court made a ruling concerning state law, it would be an advisory opinion.<sup>4</sup> Therefore, the Court rephrased the certified question to read:

Has Nevada consented to damages liability for a State agency's violation of the minimum wage or overtime provisions of the federal Fair Labor Standards Act. 29 U.S.C. §§ 206-207, whether in enacting NRS § 41.031 or otherwise?

#### **Nevada has consented to damages liability under FLSA**

States are immune from being sued in their own courts.<sup>5</sup> The state's legislature has the power to waive this immunity.<sup>6</sup> Interpreting the plain language of the statute, the Court holds that the Nevada Legislature waived immunity by enacting NRS 41.031(1).

The State argued that the statute waived tort liability, but not statutory liability like that. The State cites several cases in which the Court has applied NRS 41.031 to tort claims and found the statute to be a waiver of sovereign immunity from tort liability. The Court noted, however, that these cases do not address nontort liability. The Court, found the statutory language of NRS 41.031(1) unambiguous, and rejected the State's argument that the statute waives only tort

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<sup>4</sup> See NRAP 5(a).

<sup>5</sup> Alden v. Mctine, 527 U.S. 706, 715 (1999).

<sup>6</sup> Nev. Const. art. 4, § 22.

liability. The Court was hesitant to assume the intentions of the Legislature and contends that, if the Legislature intended to waive tort liability but not statutory liability, they would have done so expressly.

In Nevada, the Court favors a waiver of immunity and strictly construes any exceptions to that waiver.<sup>7</sup> Therefore, it would be against this interpretative scheme to hold that the statute makes the State immune from everything except tort liability. This would also violate Nevada's public policy reflected in NRS 41.031 of the State taking responsibility for wrongdoing.

The State makes several other arguments, but the Court was not persuaded by any of them. One of these arguments included the fact that all the exceptions to the waiver concern torts. The Court interpreted this to mean that, because the statute expressly says torts, the legislature could have written a waiver exclusive to tort liability but chose not to. The State also points to the legislative history of the statute, but the Court contended that even this cannot overrule the clear language in the statute. The Court agreed with the State in saying that the legislature would not "silently waive" the State's immunity from statutory liability. However, the Court stated that there is nothing about NRS 41.031(1) that is silent. Ultimately, the Court held that the statute is too clear, plain, and unambiguous to not constitute a waiver of Nevada's sovereign immunity for statutory liability.

### **Conclusion:**

The Court affirms the opinion of the lower courts in holding that NRS 41.031(1) is a waiver of Nevada's sovereign immunity. This waiver means that the State has consented to being held responsible for a State agency's, like NDOC, violation of the Minimum Wage Act and FLSA.

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<sup>7</sup> Martinez v. Maruszczak, 123 Nev. 433–34 (2007).