

Nevada Supreme Court Approves 365-Year Dynasty Trusts and Sends a Message

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In a unanimous opinion issued on March 26, 2015, the Supreme Court of the State of Nevada made a bold statement by ratifying the Nevada 365-year rule against perpetuities in the case of [*Bullion Monarch Mining, Inc. v. Barrick Goldstrike Mines, Inc.*](#), [*131 Nev. Advance Opinion 13 \(2015\)*](#).

Although the 365-year perpetuities law was already firmly engraved in the Nevada statutes and therefore this court case should have gone largely unnoticed, it was the message sent by the Nevada Supreme Court Justices to a small group of anti-Nevada promoters that made this case the final nail in the coffin after a spectacular series of events.

It all started with an article published last year in *The Vanderbilt Law Review* titled [*Unconstitutional Perpetual Trusts*](#), wherein co-authors Steven J. Horowitz and Robert H. Sitkoff called the constitutionality of certain longer-term dynasty trust statutes into question. Their primary claim was that dynasty trusts set up under the laws of a state with a state constitutional ban on perpetuities, but a long statutory term-of-years perpetuities period, violate the state's rule against perpetuities. Nevada was one of the targeted states, along with Wyoming, North Carolina, Tennessee and Arizona.

The Horowitz/Sitkoff article was heavily criticized because its conclusion was opposite of that of the substantial case law and treatises. Based on the case law and treatises, the article was incorrect in asserting that the state legislature and courts could not alter the constitutional prohibition of perpetuities with changing circumstances and changing policy considerations. The constitutional prohibition is a general statement of policy and does not freeze the constitutional provision. Over time, the application of the ban on "perpetuities" set forth in the state constitution can change.

At this point, the "issue" seemed to have gone away.



The Nevada Supreme Court Rules

What are the odds that only a matter of months after the Horowitz/Sitkoff article was published, the Supreme Court of the State of Nevada would lay down the hammer and rule contrary to the Horowitz/Sitkoff conclusion? Did they have the Horowitz/Sitkoff article in hand as they were writing the opinion?

According to the Court:

"In Nevada, the rule is codified in our Constitution: 'No perpetuities shall be allowed except for eleemosynary purposes.' Nev. Const. art. 15, § 4. But in 1987, Nevada adopted a statutory rule against perpetuities. See NRS 111.1031; 1987 Nev. Stat., ch. 25, §§ 2-8, at 62-65. **The new statutes added a wait-and-see provision, which, as amended, gives contingent property interests 365 years to vest before they are invalidated.** See NRS 111.1031(1)

(b).” [Emphasis added.]

Thus, the Nevada Supreme Court went out of its way, in a unanimous decision, to confirm the 365-year statute in this very pointed paragraph.

The Alaska Critique

In a media article titled [“Grudge Match: Why the Blattmachr / Oshins 365-Year War of Words Won’t End”](#) on the Trust Advisor website, author Scott Martin created a fight poster to hype and highlight the series of events. In that media article, Alaska trust promoters claimed that the new Nevada Supreme Court case doesn’t involve a trust and therefore doesn’t say that a 365-year trust is permitted under Nevada law.

They are correct that the *Bullion Monarch* case was about a mining agreement. However, there was an actual plaintiff and defendant suing each other and requesting an actual decision about their specific contractual dispute. Therefore it is absolutely correct that the Supreme Court discussed and ruled on their particular mining agreement. But it is absolutely incorrect to even suggest that the Supreme Court didn’t make the statement about the 365-year perpetuities law that was quoted above.

The Nevada Supreme Court made a very big point of laying out the evolution of the Nevada 365-year perpetuities law. Furthermore, just as numerous prior case law and treatises have stated, the Supreme Court very clearly noted in the decision that the perpetuities law is not static and therefore can change over time (i.e., such as by the legislature enacting a 365-year statutory period).

How do you argue with a quote? Especially a quote that is supported by so much analysis and context. And especially one made by the Nevada Supreme Court, the Court that has the final say over the interpretation of the Nevada laws.

Going Forward

With this new Supreme Court decision in the books, Nevada continues to be a leading dynasty trust state. In fact, having the Supreme Court specifically ratify its dynasty trust law may give Nevada a huge competitive advantage over states such as Alaska that have not had such a ruling.

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