

**Olivia Cajero Bedford**  
District 3

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FIFTY-THIRD LEGISLATURE

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## Arizona State Senate

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May 19, 2017

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ATTORNEY GENERAL  
EXECUTIVE OFFICE

Mark Brnovich  
Attorney General  
State of Arizona  
1275 W. Washington Street  
Phoenix, AZ 85007

Dear Attorney General Brnovich,

I am writing to request an advisory opinion from your office concerning a matter of interest to my constituents addressing the constitutionality of Arizona's Trust Code. Specifically, are Arizona's legislative amendments to the Rule Against Perpetuities invalid under Arizona's constitutional clause on perpetuities?

The rule against perpetuities provides the following: "no interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest." In other words, any contingencies on which a future interest depends must by their own terms be certain to resolve within that time.

Under the common law rule, the validity or invalidity of a future interest is determined at the moment it is created. If there is a scenario under which vesting of an interest might be delayed beyond the period of the rule, that interest is invalid on day one.

Moreover, Arizona has a constitutional provision prohibiting perpetuities. Article 2, Section 29 states, "no hereditary emoluments, privileges, or powers shall be granted or conferred, and no law shall be enacted permitting any perpetuity or entailment in this state."

However, the Arizona Legislature and many other state legislatures have abrogated the common law rule against perpetuities. In 1994, the Arizona legislature enacted a ninety-year "wait and see" statute, largely tracking the provisions of a model developed by the National Conference of Commissioners on Uniform State Laws in the mid-1980s. This was codified at A.R.S. sec. 14-2901 through 14-2906. ARS sec. 33-261 remains on the books, but it has been superseded by these sections.

Subsequently in 1998, the legislature added a paragraph 3 to subsection A of A.R.S. sec 14-2901, abrogating the common law rule altogether if the future interest in question is in a trust and the trustee has a power of sale -- provided that someone who was alive when the trust was created

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has a power, exercisable at some point after the trust was created, to terminate the interest. Then, in 2008, the legislature amended paragraph 2 of subsection A, increasing the "wait and see" period for determining the validity of a nonvested future interest to five hundred years.

Thank you for your consideration. Please do not hesitate to contact me if you have any questions regarding this request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Olivia".

Olivia Cajero Bedford  
Arizona State Senator  
Legislative District 3

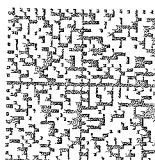
Senator Olivia Cájero Bedford  
 Arizona State Senate  
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 Phoenix, Arizona 85007

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