

IN THE
Supreme Court of the United States

JUDITH L. HARVEY, AS TRUSTEE OF THE
DAVID T. & JUDITH L. HARVEY TRUST, AND
AS PERSONAL REPRESENTATIVE OF THE
ESTATE OF DAVID T. HARVEY, DECEASED,

Petitioner,

v.

CITY OF RENO, NEVADA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEVADA

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Whether Harvey Trust has asserted a matter for consideration by this Court when its inverse condemnation claims are barred by any applicable statute of limitations;

Whether Harvey Trust had any recognizable property interest under state law in the Surplus Parcel that NDOT auctioned in 2021 and which Harvey Trust had been using for access to the northwest corner of its property; and

Whether Harvey Trust's parcel is landlocked by virtue of the sale of the Surplus Parcel.

**PARTIES TO THE PROCEEDING AND
RELATED PROCEEDINGS**

The parties to the proceeding in the Supreme Court of the State of Nevada, Docket No. 88962, are as follows: Appellant/Petitioner Judith L. Harvey, as Trustee of the David T. & Judith L. Harvey Trust, and as Personal Representative of the Estate of David T. Harvey, Deceased (“Harvey Trust”).

The Respondents are the City of Reno; the County of Washoe; the State of Nevada, on Relation of its Department of Transportation (“NDOT”); and Green Acres Storage Partners LLC (“Green Acres”), a Nevada Limited Liability Company, which is not a publicly traded corporation and has no stock ticker symbol.

The directly related proceedings are as follows. The trial court proceeding was before the Second Judicial District Court, Washoe County, Nevada, before the Honorable Connie J. Steinheimer, District Judge, Docket No. CV23-00282, which entered an order dismissing the Second Amended Complaint on June 12, 2024.

The appellate proceeding was before the Supreme Court of the State of Nevada, Docket No. 88962, which entered its Order of Affirmance on September 8, 2025, and its Order Denying Rehearing on February 6, 2026.

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I. INTRODUCTION

Petitioner's request for writ of certiorari should be denied because Petitioner presents no compelling reason for this Court to exercise its discretion to grant such petition. This case does not present a situation where a United States court of appeals' decision conflicts with another decision on the same subject matter; nor does it present a situation where the Nevada Supreme Court has decided an important federal question in a way that conflicts with another state or United States appeals court; nor does it present a case where the Nevada Supreme Court's decision contradicts any decision by this Court. SUP. CT. R. 10. In fact, Petitioner's claim of error is based on what Petitioner alleges is an erroneous factual finding or misapplication of a state law.

Furthermore, Petitioner's brief in support of its petition for writ of certiorari relies on a fundamental falsehood: that the State took Petitioner's only means of access to the northwest corner of its property. Petitioner has access to the northwest corner; its property abuts Huffaker Place, a public road. Its property is bisected by a drainage ditch. Petitioner could access the northwest corner of its property by building a bridge over the ditch. It simply does not desire to incur the cost of doing so. Furthermore, Petitioner's statement that: "The property has been in the Harvey family since the mid-1800s—predating Nevada's statehood. In 1987, as part of the construction of Interstate 580 through Reno, the State of Nevada condemned a portion of this longstanding family property for use as a highway," (Pet. at 2) is misleading. The property was owned by the Dale Poe Development Corporation at the time that it was condemned by the

Nevada Department of Transportation (“NDOT”) in order to construct I-580. Petitioners did not acquire their property until 1993, well after the State had condemned the parcel, built Interstate 580, and changed Huffaker Lane into Huffaker Place. Harvey Trust was on inquiry and/or record notice of the conditions of the property at the time of acquisition, and is now barred by any applicable statute of limitations from bringing its actions.

II. STATEMENT OF THE CASE

A. Factual Background

The undisputed facts are that in or around 1985, the State filed a condemnation action against Dale Poe Development Corp. seeking to condemn certain property for the I-580 project. *See* Appendix E to Pet. for Writ of Certiorari at ¶¶ 6-8; Appendix B at 32a.

A Judgment of Condemnation was entered by the state trial court on January 30, 1987. The court also entered the Final Order of Condemnation on January 30, 1987. The Final Order of Condemnation was recorded with the Washoe County Recorder’s office on the same day and thereupon, pursuant to Nevada Revised Statute (“NRS”) § 37.160, the property vested in the State. It remains a valid, binding judgment establishing the final right to the fee simple absolute ownership of the property described in that Order. Issue and claim preclusion bar re-litigation of this identical issue. *See Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 194 P.3d 709 (Nev. 2008).

On December 9, 1991, after constructing the cul-de-sac now known as Huffaker Place, NDOT quitclaimed Huffaker Place to the City of Reno.

On February 26, 1993, more than a year later, a Joint Tenant Deed was recorded deeding APN 043-011-08 from the predecessor-in-interest to David T. Harvey and Judith L. Harvey, husband and wife. That parcel was directly south of and abutted Huffaker Place.

On December 14, 2020, the State of Nevada approved the disposal by public auction of Washoe County Assessor's Parcel No. 043-282-03 (the "Surplus Parcel"). In July 2021, Green Acres Storage Partners, LLC purchased the Surplus Parcel at a public auction. Pursuant to NRS 408.533(3), the State of Nevada conveyed the Surplus Parcel to Green Acres via quitclaim deed on July 29, 2021, which deed was recorded in the Washoe County Recorder's Office as Document No. 5213503 on August 10, 2021.

B. Procedural Background

On February 14, 2023, Harvey Trust filed its initial complaint in the Second Judicial District Court in Washoe County. On April 7, 2023, Harvey Trust filed a First Amended Complaint. On February 28, 2024, Harvey Trust filed a Second Amended Complaint ("SAC"). On June 12, 2024, the Second Judicial District Court granted the motions to dismiss filed by the Nevada Department of Transportation, Green Acres Storage Partners, LLC and the City of Reno. Harvey Trust filed a Notice of Appeal to the Nevada Supreme Court on July 8, 2024. After briefing, the Nevada Supreme Court, sitting en banc, affirmed the dismissal on September 8, 2025. On September 22, 2025, Harvey Trust filed a petition for rehearing, which ultimately was denied on February 6, 2026. Harvey Trust then brought the instant writ for certiorari on May 1, 2026.

III. SUMMARY OF THE ARGUMENT

Harvey Trust's Petition for Writ of Certiorari should be denied because it has not presented an issue of federal importance or conflict among states that would warrant consideration by the United States Supreme Court. Rather, Harvey Trust's claims are all squarely matters of state law. Harvey Trust's takings claim is precluded by the Nevada statute of limitations set forth in NRS § 11.080. Furthermore, to have a claim for a compensable taking of a property interest, one must have a property interest in the first place. It is undisputed that Harvey Trust never owned the Surplus Parcel auctioned by NDOT, and the Nevada Supreme Court rejected its claims of an easement over that parcel. Lastly, Harvey Trust's parcel is not landlocked by NDOT's sale of the Surplus Parcel; its parcel abuts a public road known as Huffaker Place and it may access the northwest corner of the parcel from its own property.

IV. ARGUMENT

A. Harvey Trust's Taking Claim is Barred by the Statute of Limitations.

The fundamental argument asserted by Harvey Trust is that NDOT took a property right from them by "landlocking" the northwest portion of their property (a portion of APN 043-011-040) when it auctioned a surplus property (APN 043-282-03), and ultimately sold it to Respondent Green Acres, the successful bidder, in 2021. Both the district court and the Nevada Supreme Court rejected this argument and properly found that NDOT took nothing because Harvey Trust held no "easement" or

other property right in the parcel NDOT sold and because Harvey Trust's claims were time-barred under state law. *See* Appendix A.

A claim which is not legally sufficient is subject to dismissal under Nevada Rule of Civil Procedure ("NRCP") 12(b)(5), especially after the district court granted Harvey Trust leave to amend the complaint. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260 (Nev. 1993). Harvey Trust failed to plead facts that would give rise to a claim for relief. In fact, Harvey's factual allegations are directly contradicted by publicly available recorded land records.

"No action for the recovery of real property, or for the recovery of the possession thereof . . . , shall be maintained, unless it appears that the plaintiff or the plaintiff's ancestor, predecessor or grantor was seized or possessed of the premises in question, within 5 years before the commencement thereof." NRS § 11.080. The limitations period begins to run when the plaintiff has been deprived of ownership or possession of the property. *Berberich v. Bank of Am., N.A.*, 136 Nev. 93, 97, 460 P.3d 440, 443 (Nev. 2020) (the "limitations period is triggered when the plaintiff is ejected from the property or has had the validity or legality of his or her ownership or possession of the property called into question.") The limitation period also begins "to run against a property owner once the owner has notice of disturbed possession." *Id.* At minimum, Harvey Trust had notice of the location of Huffaker Place and the demolition of the Dry Creek Bridge when Harvey was deeded the property south of Huffaker Place in 1993.

In 1987, some 39 years ago, the Huffaker Lane bridge spanning Dry Creek (sometimes referred to as the Dry Creek Bridge), abutting the northwest portion of Harvey Trust parcel, was removed. NDOT owned the land where the bridge was removed at the time. If there had been a diminution in value that could have given rise to a cause of action resulting from that removal, such cause of action is long since barred by any possible statute of limitations.

Harvey Trust's parcel (APN 043-011-040) had access to Huffaker Lane prior to the 1987 demolition of the Dry Creek Bridge. Huffaker Lane was bisected by Interstate 580, and the former lane was turned into a cul-de-sac known as Huffaker Place. Today, Harvey Trust's parcel abuts the south side of Huffaker Place. Access to Harvey Trust's property has never been cut off. If Harvey Trust believed any portion of its property (*i.e.*, the NW corner) was legally damaged as a result of the removal of the bridge, Harvey Trust was on inquiry and/or record notice of that fact when it acquired the parcel in 1993. The statute of limitations began, at the very latest, on that date. Harvey Trust's predecessor in interest could have, but did not, bring a timely inverse condemnation claim or negotiate those damages into the price paid for the easements NDOT purchased from Harvey Trust's predecessor-in-interest in 1986 when NDOT purchased "a perpetual easement and right-of-way for the location, construction, and maintenance of slope and drainage easements upon, over and across certain real property of the undersigned" over the exact same property that Harvey Trust now claims is "damaged" by the 2021 sale to Green Acres. Harvey Trust's takings claim is time-barred by any applicable statute of limitations.

B. The Northwest Corner of Harvey Trust's Property Is Not "Landlocked."

Harvey Trust's argument that NDOT's sale of the Surplus Parcel north of Huffaker Place to Green Acres completely landlocked Harvey Trust's property is fallacious. In its SAC, Harvey Trust alleged that the removal of the Dry Creek Bridge in or around 1987 "landlocked" the northwest corner of its property. Appendix E at ¶ 60. This is wholly inaccurate, as the northwest corner remains a part of APN 043-011-40, which has access to and abuts the Huffaker Place cul-de-sac. As a matter of law, therefore, the northwest corner of APN 043-011-40 is not legally "landlocked." More importantly, even if it had been legally landlocked, that deprivation of access occurred in 1987 and is barred by any applicable statute of limitations. Appendix E at ¶ 59.

C. The Sale of NDOT's Surplus Property to Green Acres Could Not Constitute a Taking Because Harvey Trust Never had a Property Interest in that Property.

Harvey Trust does not now plausibly claim that the statute of limitations set forth in NRS § 11.080 is unconstitutional or violates federal law, or even that it creates an inconsistency between courts on the same issue. Harvey Trust instead claims that it was not the demolition of the bridge but the sale of the property that NDOT auctioned off in 2021 that is a taking.

In order for a taking to have occurred, Harvey Trust must have had some sort of property interest in that NDOT-owned Surplus Parcel. While Harvey Trust

claims it had an easement interest, the district court and Nevada Supreme Court properly examined Nevada law to determine if, as a matter of law, there was any possible support for the allegation in the SAC that Harvey Trust had “acquired an easement by implication and/or by necessity and/or a special easement” (Appendix E at ¶ 53), over the property NDOT sold to Green Acres in 2021 and properly concluded that no such easement had been created through those doctrines.

When determining a person’s property interest, the courts must look for the source of the interest, such as state law. “Property interests, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.” *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972). “‘To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.’” *Malfitano v. County of Storey*, 133 Nev. 276, 282, 396 P.3d 815, 819-20 (Nev. 2017), *quoting Roth*, 408 U.S. at 577.

The Nevada Supreme Court concluded that Harvey Trust never owned the parcel that NDOT sold to Green Acres. Appendix A. Nor did Harvey Trust have an easement interest in that parcel under the mechanisms for creation of an easement by necessity, prescription or implication under Nevada law. Appendix A. The Nevada

Supreme Court rejected Harvey Trust's claim that an easement by necessity existed because "[t]he Harvey Trust never owned the entirety of the access road so as to establish prior common ownership." Appendix A at 8a. The Nevada Supreme Court also held that an easement by prescription could not have been created because "[i]t is a well-settled principle that absent a statute allowing adverse user against the state, no rights as to state property can be acquired by prescription." Appendix A at 8a-9a, *quoting Sloat v. Turner*, 93 Nev. 263, 266, 563 P.2d 86, 87-88 (Nev. 1977). In other words, Harvey Trust's use of the Surplus Parcel while it was owned by NDOT could not result in an easement by prescription under Nevada law. Finally, the Nevada Supreme Court rejected Harvey Trust's claim for easement by implication because "the Harvey Trust failed to plead facts to establish unity of title and subsequent separation by the dominant tenement so as to establish an easement by implication." Appendix A at 9a. Thus, the Nevada Supreme Court correctly evaluated Nevada easement law and concluded that Harvey Trust "has not pleaded facts sufficient to establish that it possessed an interest to be taken in the first place." Appendix A at 10a.

Lastly, Harvey Trust relied on *State ex rel. Dep't of Highways v. Linnecke*, 86 Nev. 257, 468 P.2d 8 (Nev. 1970) to conjure a "special right of easement" that has never existed. Even if there were such a thing in Nevada law as a "special right of easement" that could hypothetically be created by *Linnecke*, it would be inapplicable to the present scenario because, according to *Linnecke*, a property owner is not entitled to access at every point of their property and Harvey Trust parcel retains access to the Huffaker Place cul-de-sac, albeit not in the northwest

corner. The actual holding of the case concluded that when a governmental entity takes or substantially impairs existing legal access to a property that diminishes its value, that diminution in value is a compensable damage resulting from that taking. But even assuming that there was such diminution in value, the statute of limitations bars any cause of action for an alleged taking in this case. The argument that a “special easement” was “created” by *Linnecke* was rejected by the Nevada Supreme Court because *Linnecke* did not and does not “create” nonexistent property rights. Appendix A at 7a-8a.

Because Harvey Trust could not establish any property interest in the Surplus Parcel, no property rights were taken from Harvey Trust when NDOT sold the Surplus Parcel. Further, one does not “landlock” a *portion* of a parcel when that same parcel has adequate, alternative access. Harvey Trust has access to the billboard on the northwest corner from its own property (indeed, the northwest corner is part of the same parcel that abuts Huffaker Place), but must build a bridge over the drainage ditch that runs through its property, which it does not wish to do.

The Nevada Supreme Court correctly relied on the Nevada case of *Sloat v Turner*, 93 Nev. 263, 563 P.2d 86 (Nev. 1977) for the applicable law governing this situation. In that case, landowners brought an inverse condemnation claim against the State for allegedly taking the access to their property as a result of the construction of Interstate 15 in Clark County, Nevada. The landowners’ property was landlocked, but they claimed they had acquired a prescriptive easement over adjoining property, and when that property was acquired by the State, the landowners

asserted damages for the loss of the easement. The district court agreed with the landowners and awarded damages. The Nevada Supreme Court reversed and directed judgment for the State, holding that there was no prescriptive easement and, therefore, there could be no taking for a right which does not exist. Specifically, the Court held that “[n]either constitution or statute contemplates compensation for that which does not exist.” *Id.* at 269, 563 P.2d at 90, *quoting Probasco v. City of Reno*, 85 Nev. 563, 566, 459 P.2d 772, 774 (Nev. 1969). Harvey Trust is not entitled to compensation for a right that does not exist.

Harvey Trust next tries to claim that there is a conflict among states about abutter’s rights. Harvey Trust’s contention that *Bacich v. Board of Control*, 144 P.2d 818, 23 Cal. 2d 343 (Cal. 1943) and *Wellswood Columbia, LLC v. Town of Hebron*, 992 A.2d 1120, 295 Conn. 802 (Conn. 2010) conflict with the Nevada Supreme Court’s interpretation is belied by the holdings in those cases. In *Bacich*, the California Supreme Court held that where an abutting property owner’s ability to access the abutting street by virtue of the street being lowered by fifty feet was limited to a stairwell, the access to his property was impaired. *Bacich*, 144 P.2d at 825-26, 23 Cal. 2d at 354-56. The court reversed the lower court’s dismissal and remanded to allow the plaintiff to amend his complaint. *Id.*

In this case, the facts differ sharply, as Harvey Trust did not acquire its property abutting the cul-de-sac until after the cul-de-sac had been built. If Harvey Trust asserts the case for the proposition that a property owner abutting a road must be compensated when that

road is turned into a cul-de-sac, Harvey Trust needed to bring that claim more than 30 years ago. The statute of limitations to assert abutter's rights has long since passed.

In *Town of Hebron*, the Supreme Court of Connecticut determined that the Town's closure of a road that provided the only access to a development was in excess of the municipality's delegated powers. 992 A.2d at 1132, 295 Conn. at 821. Harvey Trust has never alleged that NDOT acted in excess of its powers in condemning property in order to construct I-580. Neither case contradicts the Nevada Supreme Court's order upholding dismissal because, here, Harvey Trust continued to have access to its property via the cul-de-sac, NDOT was within its legislatively granted powers to condemn property and construct I-580, and, if Harvey Trust had an objection, it, or its predecessor in interest, needed to bring that objection within five years of the condemnation order in 1987. Another key difference is that here, Harvey Trust's predecessor-in-interest was compensated at the time of condemnation.

NDOT's sale by auction of the Surplus Parcel did not constitute a taking of an easement because Harvey Trust never acquired an easement over that parcel. NDOT may have allowed Harvey Trust to use that parcel, but an easement cannot be acquired by prescription against State-owned property under Nevada law. *Sloat*, 93 Nev. at 266, 563 P.2d at 88. There is no dispute that NDOT properly disposed of the property by auction pursuant to the process set forth in NRS § 408.533. Even though Harvey Trust claims that it was not personally notified that the property was for sale, that is not the required process. Because the issue of whether an easement existed

in the first place is squarely a matter of state law, the petition for certiorari should be denied.

D. NRS § 408.533 Does Not Support Harvey Trust’s Argument that it Had an Easement.

Harvey Trust contends that the Nevada Supreme Court failed to consider NRS § 408.533(6), which provides that:

The Department may reserve and except easements, rights or interests from the conveyance of any real property disposed of in accordance with this section or exchanged pursuant to subsection 5 of NRS 408.489. The easements, rights or interests include, but are not limited to: . . . (b) Easements of access to and from abutting land.

Harvey Trust cites *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972) and *Malfitano v. County of Storey*, 133 Nev. 276, 396 P.3d 815 (2017) for the proposition that NRS § 408.533 creates a “legitimate claim of entitlement” to a “protected property interest.” Pet. at 7. Neither case supports Harvey Trust’s claim. First, both cases rejected the claim that the appellant had a protected property interest. Second, whether Harvey Trust had an easement over the property auctioned by NDOT is squarely a matter of state law over which this Court need not make a determination. Third, Harvey Trust ignores NRS § 0.025, which specifies that “[m]ay” confers a right, privilege or power,” as opposed to the term “shall,” which “imposes a duty to act.” NRS §§ 0.025(1)(b) and (1)(d). By the plain language of NRS

§ 408.533, there was no duty imposed upon NDOT to consider Harvey Trust's access. Fourth, the Nevada Supreme Court did consider Harvey Trust's argument and ultimately denied the reconsideration. Fifth, Harvey Trust ignores the other part of NRS § 408.533, which provides:

1. It is conclusively presumed in favor of the Department and any purchaser for value that the Department acted within its lawful authority in acquiring and disposing of the property, and that the Director acted within his or her lawful authority in executing any conveyance vesting title in the purchaser. All such conveyances must be quitclaim in nature and the Department shall not warrant title, furnish title insurance or pay the tax on transfer of real property.

2. No person has a right of action against the Department or its employees for a violation of this section. This subsection does not prevent an action by the Attorney General on behalf of the State of Nevada or any aggrieved person.

Thus, NDOT was not required to consider Harvey Trust's access to its property using the parcel conveyed to Green Acres, and Harvey Trust does not have a right of action against NDOT. The Nevada Supreme Court interpreted state law accurately and found Harvey Trust's motion for reconsideration lacking in merit.

V. CONCLUSION

Harvey Trust fails to demonstrate (or even plausibly argue) that the Nevada Supreme Court decided an important federal question in a manner that conflicts with the decision of another state, or that the Nevada Supreme Court decided a question of federal law that should be settled by this Court. The issue of whether Harvey Trust had any legally cognizable property interest in the Surplus Parcel that NDOT auctioned off in 2021 is only a matter of state law. Thus, Harvey Trust fails to raise an issue for this Court's consideration, and the Petition should be denied.

DATED this 4th day of June, 2026.

Respectfully submitted,

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