

Do Nevada Courts Ignore Delaware Precedents?

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In a recently released [article](#), Professor Stephen Bainbridge tackles the question of just how real the DExit phenomenon might really be. Among other things, he responds to my argument that Nevada eschews Delaware law precedent by virtue of NRS 78.012 which provides:

The plain meaning of the laws enacted by the Legislature in this title, including, without limitation, the fiduciary duties and liability of the directors and officers of a domestic corporation . . . , must not be supplanted or modified by laws or judicial decisions from any other jurisdiction.

According to Professor Bainbridge this is an overstatement: "In fact, Nevada courts have frequently looked to Delaware judicial decisions for guidance in interpreting the Nevada statute". In the accompanying footnote, he cites three cases: *Am. Ethanol, Inc. v. Cordillera Fund, L.P.*, 252 P.3d 663, 667 (Nev. 2011); *Shoen v. SAC Holding Corp.*, 137 P.3d 1171, 1184 (Nev. 2006); *Bedore v. Familian*, 125 P.3d 1168, 1173 (Nev. 2006). Notably, all three of these cases were decided years before the enactment of NRS 78.012 in 2017. 2017 Statutes of Nevada, Page 3998 (CHAPTER 559, SB 203).

Fundamentally, NRS 78.012 represents the legislature's commitment to statutory law:

Senate Bill 203 presents a unique drafting challenge. How does the Legislature say that it really means it? We seek to clarify the Nevada statutes and express the legislative intent that statutory law be followed. Nevada corporations should be governed by Nevada law. It is important that the businesses that have chosen to incorporate in Nevada be able to rely on Nevada law.

Senate Comm. on Jud., p. 36 (April 10, 2017) (Testimony of Lorne Malkiewich). In contrast, the most important principles of Delaware are found not in the Delaware General Corporation Law but in countless, lengthy decisions of its courts. Delaware pays the price of indeterminacy for its embrace of judge-made law. The question that corporations must answer is whether that is too high a price to pay.

Criticism of the indeterminacy of chancery has a long history. Before Oliver Cromwell became the

Lord Protector of England in 1653, the Barebones Parliament proposed both to abolish the court of chancery and to compile the law as the Commonwealth of Massachusetts had done in 1848. Randolph G. Adams, *The Laws & Liberties of Massachusetts*, 29 Mich. L. Rev. 272 (1930). Chancery was not abolished and Oliver Cromwell would later issue an ordinance aimed at its reform. See [*DExit - Would Oliver Cromwell Reincorporate In Nevada?*](#)

For more on Professor Bainbridge's article, see [Professor Bainbridge's DExit Exegesis](#).

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