OUTLINE OF THE SUMMARY

I. INTRODUCTION

II. HISTORICAL BACKGROUND

III. THE DECLARATION OF RIGHTS

IV. DIRECT DEMOCRACY

V. THE STRUCTURE OF STATE GOVERNMENT

VI. NEVADA CHECKS AND BALANCES

VII. SOURCES OF REVENUE (TAXES)

VIII. CONSTITUTIONAL RESTRICTIONS ON REVENUE

IX. EDUCATION

X. GAMING CONTROL

XI. AMENDING THE NEVADA CONSTITUTION

XII. SUMMARIZING THE SUMMARY
SUMMARY OF
THE NEVADA STATE CONSTITUTION

I. INTRODUCTION

The purpose of a constitution is to allocate powers to the government and to place limits on those powers. Constitutionalism means literally “limited government.” American constitutions, both federal and state, divide power among several components and levels. It is citizens that are ultimately responsible for the substance of constitutions in the American system of government. To accomplish its purposes, the Nevada Constitution establishes the basic structure of the state’s government. Structure, as it is used here, refers to (1) the major offices of state government, (2) the ways in which the offices relate to each other, (3) the procedures for creating laws, (4) the regulatory activities that occur within the state, (5) the means of representing the state to other states, the nation and the world, and (5) ensuring the welfare of state citizens, mainly by way of providing basic security against crime tempered by a healthy respect for civil liberties.

One thing that immediately stands out upon a cursory comparison of the federal constitution to the Nevada Constitution is that the latter is much more lengthy than the former. This tells us something. It indicates that Nevadans did not want state judges to have the broad discretion that federal judges have when interpreting the constitution. The Nevada Constitution goes into greater detail so as to clarify meaning. The intent of the Nevada Constitution is more obvious from its text than is the federal constitution. One should also notice that the Nevada Constitution is easier to amend (requiring simple majority votes), compared to the supermajorities necessary to amend the federal constitution. This indicates that the Nevada Constitution and, therefore, state government, is biased in favor of the “voting majority” with lesser protections for “voting minorities” than provided by the federal constitution. This is further evidenced by the multiple means of direct democracy available to voters in Nevada and the fact the Nevada judges are elected (to be further discussed below). Nevertheless, racial and religious minorities do have protections in the Nevada Constitution and, being United States citizens or guests of the nation our racial and religious minorities are further protected by the federal constitution.

This handout summarizes Nevada governmental structures, offices, processes, and the relationship of them to each other, along with limits on power stemming from the “Declaration-of-Rights.” Particular attention is paid, for the purposes of illustration, to two critical activities that occur within the state and are of critical importance to the success of the state: education and gaming regulation.

II. HISTORICAL BACKGROUND

The United States Constitution addresses in a clever way the problem of preventing the growth of tyranny. It divides government into three (3) separate branches based upon the functions each must respectively perform: the legislative/lawmaking function, the executive/enforcement function, and the judicial/interpretive/application function. Branches are separated while the powers are shared. This tripartite division of government was intended to prevent usurpation of power by one branch, office or official, thus minimizing governmental
tyranny over citizens. Complete elimination of tyranny is not possible, of course, but by
separating the components of government and turning them into rivals, it forces one component,
whenever it wants more power, to take it from another. However, each branch of government has
the means by which it can resist or block such encroachment of its jealously guarded
prerogatives. These procedural devices are called “checks” and they work to maintain relative
balance of power between the branches.

Theoretically, in Nevada power flows among and between the three branches. Continuous
rivalry for power between branches results in an ever-changing balance that shifts and changes
from year to year, where one branch and then another gains the upper hand in political
negotiation. A fluid mix of power, competition, and structure of government facilitates the flow
of power from one branch to another. It is usually, though not always, the branch that has the
people’s support that gets the advantage over the other branches, but such allocations of power
are temporary. No issue is ever permanently settled. This represents a significant strength of the
American systems of government. The Nevada Constitution, like those of the other 49 states,
reflects a tripartite separation of branches similar to that found in the federal constitution. The
respective constitutions are also similar regarding the individual liberties and civil rights that
they protect. We now turn to that issue.

III. THE DECLARATION OF RIGHTS

The first article of the Nevada Constitution provides guarantees for various civil liberties
against violation by state and local government. Many of these rights are identical to those found
in the federal Bill-of-Rights from the federal constitution. For other rights, however, the Nevada
Constitution provides either greater or lesser protection than the federal constitution. For
example, the Nevada Constitution affords a greater protection regarding individual property
rights and the right to obtain safety and happiness (Article I, Section 1). These are individual, not
collective rights, although the collective is entitled to safety too. Each individual gets to, within
reasonable boundaries, define safety and happiness for themselves. This goes far beyond the
rights contained in the federal Bill-of-Rights. Moreover, the Nevada Constitution protects
“liberty of conscience” where the federal constitution protects freedom of religious exercise and
freedom of speech.

There are three basic levels of freedom: (1) freedom of conscience, (2) freedom of speech,
and (3) freedom of action. The Nevada explicitly guarantees each degree of freedom, including
the all-important freedom of conscience or “thought/belief.” The federal constitution has been
interpreted over the years by the US Supreme Court to broaden the speech and religion rights to
the same degree that the Nevada Constitution already makes explicit. The US Supreme Court
also has expanded freedom of “speech” to mean freedom of “expression,” thus providing a
broader protection. However, such protection is not explicitly stated in the text of the federal
constitution, nor does it explicitly require a separation of church and state. That was the result of
Supreme Court interpretation of the First Amendment in the Bill-of-Rights. The Nevada,
Constitution, on the other hand, is far more explicit and broader in its textual protections. A
separation of church and state is textually provided in the Nevada constitution. A cursory
examination of the Nevada Constitution’s Declaration-of-Rights shows that it is far more explicit
about rights and usually offers greater protections than does the federal constitution. One can
also readily see rights that are not contained in the federal constitution at all, such as a
proscription against debtor's prisons.

On the other hand, the Nevada Constitution contains a limitation on the recognition of marriage. Only a marriage between a male and female person shall be recognized and given effect in this state by mandate of an amendment added in 2002 which was proposed by initiative petition and approved and ratified by the people at the 2000 and 2002 general elections (see Article I, Section 21). This is one of the few ways in which the Nevada Constitution is less individualist than the federal constitution, although so far the federal constitution is mainly silent on the issue of marriage, beyond a US Supreme Court decision asserting that laws that ban interracial marriage are unconstitutional (Loving v. Virginia 388 U.S. 1 {1967}).

Interestingly enough, the Nevada Supreme Court interprets the Nevada Constitution to be consonant with the US Supreme Court interpretation of the federal constitution. This means that, for example, due process requirements under the Nevada Constitution are exactly what the US Supreme Court has decided that due process rights are under the federal constitution. This makes decisionmaking by the Nevada Supreme Court much easier. This is important because the Nevada Supreme Court has to deal with far more cases than the United States Supreme Court since Nevada currently does not have an intermediate appeals court to filter out some of the caseload (to be discussed further below). However, the US Supreme Court has sent signals to state supreme courts that they should interpret state constitutions independently of the way the US Supreme Court interprets the federal constitution.

In essence, Nevada is far more individualist and libertarian than the nation as a whole and most other states. The fact that gambling and prostitution is legal in Nevada makes that clear. Nevada also shows greater deference to voters than the nation or most other states. That is especially clear from the means of direct democracy that are available to citizens in Nevada.

IV. DIRECT DEMOCRACY

As a means of providing accountability between elections, the Nevada Constitution also establishes three (3) processes of direct democracy: initiative, referendum, and recall. Nevada’s original Constitution did not provide for any of these provisions (and neither does the federal constitution). Amendments to the Nevada Constitution enacted during the Progressive Era of the early twentieth century incorporated these direct democracy processes into its framework. Referendum, recall, and especially the ballot initiative give Nevadans a direct influence in government and law by allowing them to completely bypass the legislative and executive branches.

INITIATIVE: The initiative occurs when a policy question is placed directly on the ballot (along with candidates for office). The policy question is then decided by a simply majority of voters (of those who bother to show up and vote, not necessarily a majority of Nevada citizens). Political scientists know that more “activist” citizens tend to have views outside the mainstream of all voters collectively, but these activists are the ones who tend to vote in greater numbers. This suggests that the initiative process does not necessarily make for more representative law or policy. Nonetheless, twenty-four (24) states, including Nevada, allow initiatives. According to the Initiative and Referendum Institute at the University of Southern California, over 60% of all initiative activity in the US has taken place in just six states: Arizona, California, Colorado, North Dakota, Oregon, and Washington.
REFERENDUM: It was a proposed amendment to the Nevada Constitution by the state legislature in 1905 that gave voters the opportunity to approve and take for themselves the power of the referendum. The amendment was ratified by a margin of five-to-one by Nevada voters. Thirty-eight (38) states permit referendums.

RECALL: Recall elections allow voters to remove an official from office before the term of office expires. Eighteen (18) states plus the District of Columbia, Guam, and the Virgin Islands provide for recall elections for state (or territory) officials, and thirty-six (36) states provide for recall of local officials. However, each state or territory varies according to the process that is required.

There are no processes at the national level for direct voter policymaking. Only Congress can initiate or change laws and remove federal civil officials through impeachment and conviction. However, American citizens can use one method for proposing a change to the federal constitution and two methods for ratifying the proposed amendment.

The process required for Nevada voters to use each type of direct democracy permitted by the Nevada Constitution are summarized below.

A. Initiative Process: Through the initiative (ballot proposition) process, private citizens can propose legislation or constitutional amendments outside the normal legislative process. That is, they can circumvent an unrepresentative legislature. However, only a small number of initiatives successfully make it onto the ballot.

1. The first stage of the initiative process requires supporters of a proposed law or constitutional amendment to gather a number of signatures on a petition that equals 10% of the number of voters in at least thirteen of Nevada's seventeen counties (sixteen plus Carson City) who voted in the last general election.

2. The process for changing ordinary laws through the initiative process differs slightly from that process for amending the Nevada Constitution. In the case of a law (as opposed to a constitutional amendment), upon obtaining the required number of signatures on the petition, the proposed law or amendment goes to the legislature. The legislature can save time if they approve it and thereby avoid placing the question on the ballot. If the legislature approves it (by simple majority vote in each chamber) and the governor signs it, the proposal becomes law.

3. If the proposal fails in the legislature, it MUST BE put on the ballot at the next general election for voters to decide. If a simple majority of the voters approve the initiative it transforms the proposal into law, without legislative or executive approval. This allows voters to get around obstructionist political branches of government on something the voters really want.

4. In the case of a constitutional amendment, on the other hand, the process is a little different. If a proposed constitutional amendment gets the required signatures on a petition (that number being the same as above), it bypasses the legislature altogether and goes directly on the ballot. It must then be approved by the voters in the next two general elections in order for it to be added to the constitution.
B. Referendum Process: The referendum differs from the initiative; it is an attempt to void a law already passed by the legislature. The referendum (plural = referenda) process may be used by ordinary citizens or by the legislature.

1. **Citizens**: Citizens can place a proposed law on the ballot as a referendum. If the required number of signatures is obtained on a referendum petition (that number is the same as with an initiative petition--10% of the number of voters in at least thirteen counties) the law must go on the ballot. If it is voted down in this election, it becomes void.

2. **Legislature**: The legislature can also place a referendum on the ballot. This alternative has the state legislature either pass a measure and place it on the ballot, or just place it on the ballot without passing it first. The legislature might make it either binding or merely advisory (the latter as a means to measure public support). It is often used as a way for the legislature to let voters decide a particularly controversial question. Sometimes the legislature places a referendum on the ballot as a way to take some political pressure off of the legislature.

C. Recall Process: The recall was added to the Nevada Constitution in 1912 and is a method of removing elected officials from office prior to the expiration of the term of office.

1. In order to institute a recall, a petition must be signed by twenty-five percent of the number of voters who voted in that jurisdiction's last general election. For example, if the governor is the official being targeted for recall, twenty-five percent of the number of voters in the state who voted in the last general election would have to sign the petition. If a mayor is the target, the petition would have to bear the signatures of twenty-five percent of the number of voters who voted in that city's last general election.

2. Unless the official refuses to resign within five (5) days after the petition has been filed and signatures validated as registered voters, a special recall election is held within 30 days. In this election, the voters can decide to retain the official or replace him or her with another candidate on the ballot. Whichever candidate gets the most votes, including the candidate against whom the recall was enacted, serves the remainder of the term. In effect, the voters recall an official by giving another candidate the most votes in a recall election.

3. No recall petition can be circulated or filed against any state official until he or she has actually held the office at least six (6) months, except that it may be filed against a senator or assemblyman in the legislature at any time after ten (10) days from his or her election.

4. After a failed petition and special recall election, no further recall petition shall be filed against the same officer during the term for which he or she was elected, unless such further petitioners shall pay to the public treasury the whole amount of the expenses for the original special recall election of that official.
V. THE STRUCTURE OF STATE GOVERNMENT

“Structure” refers to the institutional design (separation of branches, checks-and-balances, etc), the allocation or division of powers, and the relationship of branches to each other. Despite what some may regard as flaws, the Nevada Constitution has remained a viable document for governing the state since 1864. It provides the outline of governmental structure in the state, which resembles that of the national government. The making and execution of public policy fall within the domain of the three branches of state government: two “political” branches and one “legal” one. The legislature and executive branches are considered political institutions (i.e., “policy makers”) and the courts are considered legal institutions (“policy interpreters”). However, courts are often accused of being political, especially in states like Nevada where judges are elected. We will now take up the issue of institutional design and structure by looking at each of the three branches in turn.

A. THE LEGISLATIVE BRANCH:

1. Division into Two Chambers: The Nevada legislature is bicameral, that is, divided with a state Senate and an Assembly.

2. Members of the Nevada legislature, both Senate and Assembly, must be 21 years old, a registered voter, and a resident of the district they represent for two years. Senators are elected for four-year terms, Assembly members are elected for two-year terms. Beginning in the year 2010, term limits approved by Nevadans in 1996, will limit individuals to 6 terms (12 years) in the Assembly and 3 terms (12 years) in the Senate.

3. Representation: Representation in both chambers of the state legislature is determined by population. This sets the number of representatives and the areas they represent. U.S. Supreme Court decisions hold that a state’s representative districts must have (as near as is reasonably possible) mathematically equal populations, “one person, one vote”, as well as being drawn “compact and contiguous”. The 2001 legislature completed the task of redrawing new districts to reflect the population growth and the distribution shown by the 2000 U.S. Census. The legislature decided to maintain its current size, 42 in the Assembly and 21 in the Senate rather than increase the membership as allowed by the state constitution. The dynamic population growth within Clark County resulted in 3 Assembly and 1 state senator districts moving from the north to the south. Thus, with about two-thirds of the state’s population, Clark County’s delegation makes up two-thirds of the legislature.

4. Legislative Sessions: The Nevada legislature meets biennially, or every other year. Sessions are limited by statute to 120 days, and begin on the 3rd Monday of January in odd numbered years. Numerous pre-session committee meetings circumvent the 120-day limitation. The governor may call the legislature into special session and the governor in such cases determines the agenda. The legislature is restricted to that agenda during the special session.
5. **Vacancies** in either house are filled by the appropriate county commissioners who must appoint someone of the same political party as the individual who was originally elected to the position.

6. **The lieutenant governor** is elected at the same time as the governor. This official also serves as the President of the Senate (presiding officer). She/he may vote only in cases of a tie. The President *pro tempore* of the Senate is selected by the majority party and presides in the absence of the lieutenant governor. In this sense, it is very much like the United States Senate.

7. **The Speaker** is the presiding officer of the Assembly and likewise is chosen by members of that body’s majority party.

8. **Special Services:**

   i) **Legislative Counsel Bureau:** This bureau has four divisions; legal, audit, research, and fiscal analysis. The director of the bureau and the heads of the four divisions are appointed by the Legislative Commission (six senators and six assemblymen). The bureau provides a bill-drafting service, fiscal analysis, and post-audit analysis. With a “part time” legislative body, such an information resource is essential to the members of the legislature.

   ii) **Interim Finance Committee:** This group is composed of the members of the Assembly’s Ways and Means Committee and the Senate Finance Committee. Its function is to deal with state financial concerns between legislative sessions. It is one of 56 such interim committees.

B. **STRUCTURE OF THE EXECUTIVE BRANCH:**

   Nevada, like most states, has a plural executive branch, which means that more than one state executive aside from the governor is elected statewide and exercises independent powers from the governor. In contrast, the national executive (the President of the United States) runs with a fellow party member as a single ticket. Moreover, cabinet and other executive officers do not have independent powers aside from a few independent Commissions that are insulated from presidential and congressional pressure. The Nevada governor and lieutenant governor run independently in separate statewide elections and exercise independent powers. In addition, the other members of the state’s executive leadership, (Attorney General, Secretary of State, Treasurer and Controller) are not appointed by the governor, but are elected in independent, statewide, partisan (meaning party-nominated) political contests. Therefore, they cannot be removed from office by the governor, making them unaccountable to the governor or legislature except in the usual way of check-and-balances.

   The term limits legislation mentioned above also applies to the executive branch. The governor is already limited to two (four-year) terms. Beginning in 2010, the remainder of the executive branch will be likewise limited.
1. The Governor:

A. Qualifications: The governor of Nevada must be at least twenty-five years of age, a registered voter, and a resident of the state for a minimum of two years. The office of lieutenant governor carries the same qualifications as that of the governor. In the event of a vacancy in the office of the governor, the lieutenant governor assumes the power and duties of the executive. This holds true even if the vacancy is caused by the absence of the governor from the state. But the governor’s “absence must be effective” and the “need for action must be immediate” before the lieutenant governor may exercise a power as acting governor (*Sawyer v District Court*, 1966).

B. Duties and Responsibilities of Governor:

i) Chief Executive and Chief of State: As chief of state the governor prepares the executive budget which is presented to the legislature at the beginning of the session. He also appoints the heads of departments and divisions and members of over a hundred boards and commissions, most of these appointments do not require legislative confirmation. The governor fills vacancies in elected state offices except when otherwise designated by the Constitution. He holds memberships on several important boards and commissions, such as the Board of Pardons, the Board of State Prison, and the Board of Examiners. The governor is also the Chief of State, and as such, presides over numerous ceremonial occasions.

ii) Chief Legislator: In this role, the governor recommends legislation, especially the state’s budget. Because the governor is a full-time position and the legislature only meets biennially the proposed executive budget is usually adopted with little in the way of modification by the legislature in their brief session. The governor delivers the State of the State message to the legislature and has the power to veto legislation.

iii) Protector of the State’s Interests: The governor provides leadership in protecting the state’s natural resources, is the spokesperson for the state's interests to the federal government, and provides leadership in creating a beneficial political atmosphere for economic development. Perhaps one of the most important roles he plays is that of supervisor of gaming regulation.

2. Other Elected Executive Officials:

A) Secretary of State: This official validates the signatures on all petition matters, keeps all non-money records and issues licenses allowing corporations to do business within the state.

B) Treasurer: This is the state’s top financial officer and is responsible for receiving and depositing the state’s money.
C) **Controller:** This official is charged with paying the state’s bills and acts as the chief auditor.

D) **Attorney General:** This is the state’s chief legal officer. As such, the Attorney General defends the state and prosecutes cases before the Nevada Supreme Court.

**C. STRUCTURE OF THE JUDICIAL BRANCH:**

**A. Structure**

1. **The Supreme Court [The Court of Last Resort for Nevada]:**

   a) Nevada’s Supreme Court is an appellate court (i.e., it hears appeals and decides matters of law, not matters of fact such as guilt or innocence in a criminal case or liability in a civil case).

   b) The Nevada Supreme Court is composed of seven justices who are elected for six year terms on a state wide, nonpartisan ballot. Justices must be at least twenty-five years of age, a Nevada licensed attorney, a registered voter, and a two year resident of the state.

   c) Should a vacancy occur, the governor appoints a replacement from a list of nominees supplied by a judicial selection commission. The commission consists of the Chief Justice or his appointee, three attorneys selected by the Nevada Bar, and three non-lawyers appointed by the governor.

   d) The Supreme Court hears primarily cases appealed from the district courts. The majority of appeals are heard by three-judge panels.

   e) The court also interprets the Nevada State Constitution and reviews state laws to determine their constitutionality. In this role it determines intergovernmental relations and the limits of both executive action and legislative action.

   f) The position of “Chief Justice” is rotated and served by the Justice whose term is next set to expire.

   g) By mandate of the US Constitution, appeals from the Nevada Supreme Court go directly to the U.S. Supreme Court (not the federal district court or US Circuit Courts of Appeals).

2. **No Current Intermediate Appellate Courts in Nevada but One Has Been Proposed:**
a) Unlike the federal court system, which has an intermediate appellate level of courts, called the U.S. Circuit Courts of Appeals, Nevada does not currently have an intermediate appellate court level. All appeals in Nevada proceed directly from the trial court level (i.e., Nevada district courts) directly to the Nevada Supreme Court. Thus, Nevada state courts currently have two basic levels: the trial courts and the Nevada Supreme Court. This is in addition to county, city or municipal courts (see “Other Nevada Courts” below).

b) A proposal to amend the Nevada Constitution to create an intermediate “Court of Appeals” for the state has been approved once, and will become effective on November 29, 2006, if the proposed addition is again agreed to and passed by the 2005 Legislature and subsequently approved and ratified by the voters at the 2006 general election. [See constitutional amendment procedures in section XI of this summary below for further discussion on amendment procedures].

c) If the change is made to allow the legislature to create a Court of Appeals, the following rules will apply (by state constitutional mandate):

(1) The Court of Appeals must consist of three judges or such greater number the Legislature chooses.

(2) Each judge of the Court of Appeals will be elected by the qualified electors of the state at the general election for a term of 6 years, except for the initial judges who must be elected by the qualified electors of the state at the first general election following the creation of the Court of Appeals. The initial terms of the first judges must be staggered so that one judge serves for an initial term of 2 years, one for 4 years and one for 6 years. The initial judges shall meet as soon as practicable after their election to determine by lot the term of office that each judge will fill. Subsequently, the terms will be six (6) year terms.

(3) If the legislature increases the number of appeals judges, each additional judge must be elected by the qualified electors of the state at the first general election following the increase. The Legislature shall provide for an initial term of 6 or fewer years for each additional judge so that one-third of the total number of judges is elected every 2 years.

(4) The Supreme Court shall appoint one of the judges of the Court of Appeals to be the “Chief Judge” for the Court of Appeals. The Chief Judge serves a term of 4 years as such and may succeed himself, but that judge’s term on the court remains at six (6) years. The Chief Judge may resign his position as Chief Judge without resigning from the Court of Appeals.

3. District Courts [Trial Courts; or Courts of Original Jurisdiction]:

   a) Nevada District Courts are its state trial courts which decide matters of fact (guilt, innocence, liability, etc). Trial courts have juries to decide these matters where
appellate courts do not use juries.

b) Nevada is divided into nine judicial districts.

c) District Courts have both appellate and original jurisdiction. They hear appeals from lower level Justice Courts (Justice of the Peace Courts, or JP Courts), and Municipal Courts. Otherwise, District Courts serve as trial courts.

d) District Court judges are elected for six-year terms in a district-wide, nonpartisan (non-party nominated) election.

e) Vacancies are filled by the governor who selects from a list provided by the judicial selection committee, with two additional members drawn from the appropriate judicial district.

4. Other Nevada Courts:

a) Justice Courts / Justice of the Peace (JP) Courts: Justices for these courts are elected in nonpartisan (not party nominated), district wide elections for six year terms. The sole qualification required of this office is that a candidate must be a registered voter and have a high school diploma unless the population exceeds 250,000. In townships over 250,000 the Justice of the Peace must be a licensed attorney. Justice courts hear civil actions in which the matter in dispute does not exceed $7,500 and preliminary hearings in felonies. Justices of the Peace are not subject to impeachment, legislative removal, or removal by the Commission on Judicial Discipline. Recall is the only method by which a Justice of the Peace may be removed from office before the term expires. Appeals from this court go to District Courts.

b) Municipal Courts: These courts hear only misdemeanors. The majority of cases in municipal courts are minor traffic violations. Appeals from this court go to the District Court.

B. Vacancies on the Courts:

1. When a vacancy occurs before the expiration of any term of office on the Nevada Supreme Court or among the district judges, the governor shall appoint a justice or judge from among three (3) nominees by the commission on judicial selection. The term of office of any justice or judge so appointed expires on the first Monday of January following the next general election.

2. The commission on judicial selection is composed of:

   (a) The chief justice or an associate justice designated by him;
   (b) Three members of the State Bar of Nevada
   (c) Three persons appointed by the governor that are not members of the legal
profession.

3. Each nomination for a district court shall be made by a temporary commission composed of:

   (a) The permanent commission (on judicial selection) as described above;
   (b) A member of the State Bar of Nevada resident in the judicial district in which the vacancy occurs, appointed by the board of governors of the State Bar of Nevada; and
   (c) A resident of such judicial district, not a member of the legal profession, appointed by the governor.

C. Removal of Judges: Four methods exist to remove Nevada judges from office before their term expires:

1. Impeachment: Charges are brought by a majority of elected members of the Assembly. The Senate tries the case with conviction requiring a two-thirds majority of total membership. Justices of the Peace are not subject to impeachment. Impeachment carries a connotation of wrongdoing, and the impeached official may not hold state office again while remaining subject to further civil or criminal action.

2. Legislative Removal: For reasonable cause, two thirds of the total membership of both chambers of the legislature may remove a judge from office before expiration of the term. This procedure applies only to Supreme Court justices and District Court judges. It applies to no other elected state officials.

3. Recall: A judge may be removed from office through the recall process. A petition is circulated gathering signatures within his jurisdiction, requesting a special recall election be held.

4. Removal by the Nevada Commission on Judicial Discipline: The commission is composed of two jurists appointed by the Nevada Supreme Court, two attorneys appointed by the Nevada Bar, and three non-lawyers appointed by the governor. It may remove Supreme Court justices and District judges for inability to perform or neglect of judicial duties.

VI. NEVADA CHECKS AND BALANCES

Checks and balances are the means through which the three branches constrain each other, there by preventing excessive power from accumulating in any one branch. In other words, checks are the restrictions that one branch places on another, and balances are the means of equalizing the amount of power each possesses. A check or a balance occurs when one branch blocks an action of another branch, and therefore, gets to participate in a limited way in the functions of another branch. Checks and balances may also take the form of control over state
government exercised by its citizens. One example of the way checks and balances work is in the process of creating laws.

A. Procedures for Creating Laws:

1. A bill may originate in either chamber, the Assembly or the Senate. In some cases, bills originate through a petition process called the initiative. The Nevada Constitution requires that all bills address only one subject. Thus, "riders" cannot be attached as they can to bills introduced in the federal legislative process.

2. The bill is then referred to a committee for study and recommendations.

3. After the committee has rendered its judgment, the Assembly / Senate votes on it. Passage requires a majority of the total membership of that chamber. If it passes the bill is sent to the other chamber for consideration where it is again referred to a committee then voted on.

4. If both houses pass the bill, it is sent to the governor. It is at this point that the check occurs, as the lawmaking function now involves the executive authority. The governor may sign the bill, causing it to become law, or he may veto it. He must accept or reject the entire bill, and cannot veto portions of the bill. The governor has five days to consider the bill while the legislature is in session. If he does not act within five days, the bill becomes a law without his approval. When the legislature has adjourned, the governor has ten days to consider, after which the bill becomes a law. Should he wish to veto it, he files the bill along with his objections to it with the Secretary of State. It will be presented to the legislature at the next session. The Nevada governor does not have a "pocket veto" as does the President of the United States. A pocket veto provides that if Congress adjourns within ten working days after presenting a bill to the President, and the President has taken no action, the bill is void and must be reintroduced in Congress and go through the entire process again before being once more sent to the president.

5. The Nevada legislature may pass a bill over the governor's veto. This requires a 2/3 vote of the total membership of both the houses of the legislature. [Note: the action has then moved from the executive branch back to the legislative branch, allowing the legislative branch to check the actions of the executive.]

B. Other Examples of Checks and Balances:

1. The judicial review process allows the state Supreme Court (judicial branch) to rule on the constitutionality of laws passed by the Nevada legislature (legislative branch). Should the Supreme Court find that a law is unconstitutional, that it operates contrary to the Nevada or the United States Constitution, the law is declared null-and-void (invalid in not in effect).

2. The legislature may remove an official of the judicial branch from office.
3. The legislature may remove other elected state officials from office before their term is over. This process applies to all branches.

4. The governor fills vacancies in state offices by appointment unless a different procedure is designated by the constitution.

5. The governor may call special sessions of the legislature and determines the agenda.

6. The lieutenant governor presides over the Senate and may vote in case of a tie in the Senate.

7. The recall, initiative, and referendum processes allow the citizens of the state to check the actions of the state government by removing officials, propose and pass laws, and allow voters to express their opinions on laws already passed by the legislature.

**VII. SOURCES OF REVENUE (TAXES)**

**A. Gambling Taxes:** Taxes on gaming are the largest source of revenue for the state's general fund, generating almost half of the state's monetary receipts. The bulk of this revenue comes from the state tax on the gambling income of the casinos. Other gaming taxes do not go into the general fund. The tax on table games is split equally among the seventeen counties. Eighty percent (80%) of the slot machine tax is earmarked for education with the other 20% paying off bonds used to construct events centers on each of the two university campuses.

**B. Sales Taxes:** The sales tax was first imposed in 1955 as the legislature reacted to a crisis in public school education in the state. “Baby boomers” had created overcrowded conditions and therefore the necessity of formulating a source of revenue to provide for construction of new schools, refurbishing of older ones, and salaries for additional teachers. The sales tax rate varies by county. The sales tax usually generates a little more than a third of the revenue in the general fund.

**C. Gasoline Tax:** The state imposes a per gallon tax on gasoline that is reserved for highway construction and repair. Moreover, there is a local per gallon gas tax and a county gas tax (as well as a federal gas tax).

**D. Property Tax:** This tax is imposed on the value of real and personal property. The maximum property tax authorized by the Nevada Constitution is $5.00 per $100.00 of assessed valuation. The state average property tax is approximately $2.22 per $100.00 valuation, which is one of the five lowest rates in the nation. This flared up as a political issue in 2004 when out of state speculators came in to Las Vegas and bought up a lot of property, thus causing the property values to spike dramatically upward and, therefore, caused the property taxes to spike (not the rate, but the amount payable as tax due to
higher land/property values. It led the Nevada legislature to change the state law to cap
property tax increases at no more than 3% for individual homeowners and 8% for all
others (businesses and investors). This was done to head off attempts to pass via a ballot
measure something similar to California’s “Proposition 13” in 1978, which was the
equivalent of a political earthquake. It reversed that state’s drive for tax income derived
from property taxes and has caused California to get revenue from other sources, or
otherwise cut state spending. Most often what has occurred is repeated financial debt
crises.

E. Other Taxes: Nevada also levies taxes on liquor, cigarettes, tobacco, insurance
premiums, jet fuel, hotel and motel room rents and diesel fuel. Of these, the taxes on
liquor, cigarette, tobacco, and jet fuel go to the general fund.

VIII. CONSTITUTIONAL RESTRICTIONS ON REVENUE

A. The Nevada Constitution specifically prohibits certain sources of revenue. These are:

    1. Lotteries
    2. Inheritance taxes
    3. Personal income taxes

B. Property moving through the state, even though it may be stored in the state for some
time, or even be processed within the state, is exempt from personal property and
corporate taxation. This is called the “free port” provision and was placed in the
constitution to create a favorable tax climate for industry to locate in Nevada (Article X,
section 1.)

C. The sales tax on food (except food purchased in restaurants) and on prescription drugs
was eliminated by statute.

D. The Nevada Constitution prohibits tax revenue from being used for sectarian (i.e.,
“religious”) purposes at the state or local level (Article XI, Section 10).

E. The Nevada Constitution requires that taxation be “equal and uniform.” [Article 10,
Section 1].

F. Two-Thirds Vote of Both Houses of State Legislature Necessary to Raise Taxes:

    1. Nevada Voters Amended the Nevada Constitution which can be found in Section
       18{2} of the Nevada Constitution asserts that at least two-thirds vote of members
elected to each house is necessary to raise taxes in any form, including but not limited
to taxes, fees, assessments and rates, or changes in the computation bases for taxes,
fees, assessments and rates.
2. One exception to the two-thirds requirement to raise taxes comes in the subsequent section, Section 18(3), which asserts that the legislature may submit to the voters at the next general election the option to raise taxes. Such a tax increase would take affect only after approval by at least a simple majority of the votes cast on the referendum (i.e., 50% plus one vote or more is necessary to raise taxes in this manner).

3. On July 21, 2003, after weeks of debate, the Nevada state legislature passed a budget that included a record $836 million in new state taxes, ostensibly to fund public schools. It was the result of a budget battle that eventually resulted in a lawsuit filed by Governor Kenny Guinn against the state legislature before the Nevada Supreme Court. The Court’s decision recognized the validity of the voter-approved two-thirds supermajority requirement to raise taxes, but suspended that requirement in that case. It was a very controversial decision, to say the least.

IX. EDUCATION

Article XI of the Nevada Constitution addresses the subject of education. The article gives to the legislature the responsibility of encouraging "by all suitable means the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvements."

A. Lower Education: Seventeen school districts, whose boundaries are contiguous with the state’s seventeen counties, operate the public schools in Nevada. The districts have considerable autonomy. Each district has an elected school board, which appoints a district superintendent. The State Board of Education has ten elected members, six from Clark County, two from Washoe County, and two from the remainder of the State. The State Superintendent of Public Instruction is appointed by the State Board.

B. Higher Education: The University and Community College System of Nevada, (U.C.C.S.N) consists of two university campuses, two 4-year state colleges, three community colleges, and the Desert Research Institute. The system is governed by the U.C.C.S.N. Board of Regents. The 13-member board is elected for six-year terms, with 9 of the 13 currently from Clark County. The Board of Regents sets policy and oversees the operation of the system institutions.

B. Funding: Financial support for education is mandated by Article XI, Section 6. The article requires the legislature to appropriate money from the state general fund for the support of education. The legislature in 1955 created the first sales tax to supplement other general fund revenue. In 1967, a school support tax was added, to be collected at the same time as the sales tax. The school support tax would be returned to the county of origin and reserved for the support of the public schools.

D. Sufficiency and Uniformity: Support for Nevada schools was sufficient throughout the 1970's due to the growing state economy. The recession of the early 1980's, however,
resulted in financial problems for school districts and the University System. Recent studies have shown that Nevada spends an inordinately low amount on public school education when compared to other states. These have raised questions concerning the quality of education Nevada students receive. Yet, Nevada students’ scores on the nationally standardized tests have been as high as or higher than the national norm.

E. Sectarian Instruction Prohibited: Sectarian (i.e., religious) instruction in all public schools, including college, is explicitly outlawed by the Nevada Constitution (Article XI, Section 9). Moreover, any public school that allows or engages in sectarian instruction may lose its funding from the state (Article XI, Section 2).

X. GAMING CONTROL

A. Gaming has been legal in Nevada since 1931 when it was re-legalized after a period of prohibition. However, the state did not enter the regulatory picture until 1945 by means of the state Tax Commission. Subsequently, responsibility for the regulation of gaming was divided between two agencies. The Gaming Policy Committee reviews gaming matters and is chaired by the Governor. It acts in a purely advisory capacity. The Nevada Gaming Commission, on the other hand, sets policies for the regulation of gaming and grants gaming licenses. The Gaming Control Board is the investigative, enforcement, and audit arm of the Gaming Commission. Members of both the Gaming Control Board and the Nevada Gaming Commission are appointed by the Governor.

B. Gaming Control is an obligation of state government that, until recently, has been unique to Nevada. From the inception of legalized gaming, Nevada has devised a complex and sophisticated machinery to regulate it. The supervision of gaming has become the responsibility of the executive branch. However, examination of the development of gaming controls indicates that the executive branch can accomplish this duty only with the cooperation and support of the legislature.

C. Gaming has existed in Nevada for longer than can be officially documented since an act is legal until it is made illegal. Native Americans who lived in Nevada prior to statehood practiced several forms of recreational gambling, and gambling was not unknown in the emigrant caravans who passed through the Great Basin on their way to California.

D. When the Comstock Lode was discovered in 1859, the rush to mine the area for Silver formed one of the most colorful of all of the mining boomtowns, Virginia City. At one time it contained fine restaurants, theaters, churches, saloons, gambling houses, billiard rooms, and a flourishing red-light district of competing brothels. Indeed, it would be difficult to find a frontier mining-district that did not possess several similar establishments. The mention of such names as Tombstone, Arizona; Cripple Creek, Colorado; or Deadwood, South Dakota (where Wild Bill Hickock was murdered on August 2, 1876, holding “the dead man’s hand”-- a pair of eights and a pair of aces) still evokes images of saloons and gambling halls.
E. When organized government was formed following the discovery of the Comstock silver lode, the issue of gambling had to be addressed. The Nevada Territorial government declared gambling illegal, but the law was not rigorously enforced. The state government continued the territorial ban on gambling with equally weak attempts at enforcement.

F. The legislature in 1867 passed a bill legalizing gambling, the bill was vetoed by the state's first governor, H.G. Blasdel. The 1869 legislature passed the bill over the governor's veto. Gambling thus was legal within the state of Nevada from 1869 until 1910. It was not practiced as it is today, but occurred in the back rooms of saloons, was not advertised, and women were not allowed to be present in the gambling rooms.

G. Progressive reformers lobbied against legalized gambling and were successful in 1910 when the legislature once again declared gambling illegal in Nevada. The 1911 legislature legalized certain card games, such as poker, but this was outlawed by the 1913 legislature. The 1915 legislative session again legalized card games where the deal alternated. Despite this shifting legal status, gambling continued to thrive.

H. Gambling became legal again in 1931. This action was taken by the state legislature for many reasons. One reason was uncertain economic conditions related to the Great Depression of the 1930's. Another was the reality that gambling had thrived during the years when it was illegal, actual enforcement of its illegal status was difficult and was perhaps not the best use of the law enforcement agencies, and that profits from gambling were being diverted outside of the state. Legalization of gambling would enable the state to regulate it, to control it, to retain its profits within the state, and perhaps most importantly, to tax it. Also, state leaders hope to diversify Nevada’s limited economy by attracting tourists, and gambling was another way to appeal to them.

I. State government was slow to become directly involved in the regulation of gaming. Licensing was initially the responsibility of the cities and counties. During and after World War II, gambling activity in Nevada experienced such growth that the legislature entrusted the State Tax Commission with the responsibility for issuing licenses in 1945.

J. Still, there was insufficient control over gaming. Rumors of the involvement of organized crime, several mob-related murders, hearings on organized crime activity conducted by Senator Estes Kefauver (D-TN), and a series of articles in the LAS VEGAS SUN combined with continued growth and the fear of federal intervention in state matters resulted in the formation of the Gaming Control Board by the state legislature at the suggestion of Governor Russell in 1955. This was to be the investigative and enforcement arm of the State Tax Commission.

K. Continued rumors of mob involvement in gaming led Governor Grant Sawyer to recommend additional reforms. In 1959, responsibility for the regulation and supervision of gaming was transferred to a newly created state agency, the State Gaming Commission, by the legislature at the suggestion of the governor. The **Gaming Control Board** was moved to the **Gaming Commission**, and continued to function as the
investigative and enforcement arm. They conduct unannounced inspections to inspect gaming equipment and casino premises (where no search warrant or probable cause is needed given that casinos are “pervasively regulated industries”).

L. Governor Sawyer also instituted the “Black Book,” a list of underworld figures who are not allowed within gaming establishments. Gaming properties risk losing their licenses should they allow a figure listed in the Black Book to patronize their establishments. Sawyer was influential in establishing another gaming regulatory agency, the Gaming Policy Board. This Board consists of the Gaming Commission and the Gaming Control Board and is chaired by the governor. It is the only gaming regulatory agency in which the governor participates directly, although he does appoint the members of the Gaming Commission and the Gaming Control Board. The Gaming Policy Board functions in an advisory manner only.

M. Cheating Control: Gaming control today addresses numerous cheating issues. Cheating by either the casino or the customer is an ongoing concern. Skimming (failure by a casino to report all its gross profits for purposes of federal and state taxes) is another well-publicized issue. Casinos are required to file numerous periodic reports to the federal and state government. Continued surveillance to prevent the infiltration of organized crime as well as the need to demonstrate strong self-policing capabilities in order to prevent federal intervention are themes that are foremost in the minds of those involved in gaming regulation. Further successful state control of gaming will require the cooperation of the executive branch and the state legislature, as well as the casinos themselves. Many of the casinos in Nevada today, especially the large ones, are publicly traded (i.e., sell stock or shares) and are, accordingly, also regulated by the federal Securities and Exchange Commission (SEC). These regulations relate to profit reports from a public company to its shareholders and are not gambling regulations per se.

XI. AMENDING THE NEVADA CONSTITUTION

The procedures for amending the Nevada Constitution are found in Article 16 of the state constitution.

A. Legislature Procedure:

1. Any amendment(s) to the Nevada Constitution may be proposed in the Senate or Assembly. A proposal needs only a simple majority vote in each of the two houses to be referred to the next Legislature for a second attempt. That is, a proposed amendment must be approved by two successive legislatures by these rules.

2. If a proposed amendment is approved in this manner, the Legislature must then submit such proposed amendment(s) to the voters. If voters approve and ratify the amendment by a majority vote, the amendment shall become a part of the Constitution.
3. If, two or more amendments which affect the same section of the constitution are ratified by voters:

   (a) They each become a part of the constitution if they do not contradict one another.

   (b) If one or more contradict another, the amendment that received the largest favorable vote, and any other ratified amendment or amendments compatible with it, shall become a part of the constitution.

B. Convention Procedure:

1. If at any time the Legislature votes, by a two-thirds vote of each house, that it is necessary to cause a revision of the entire Constitution, they shall recommend to the voters at the next election to call for or against a convention to consider a revision of the constitution or a new one altogether.

2. If a majority of voters vote in favor of calling a convention, the Legislature shall, at its next session provide by law for a convention to be held within six (6) months after the passage of such law.

3. The constitutional convention shall consist of a number of members not less than that of both branches of the Legislature.

C. Other Provisions:

1. The Nevada Constitution does not indicate the requirements for amending the constitution, such as whether a simple majority vote at the convention is sufficient to propose an amendment. That is left to the Nevada Legislature when it passes the law to open a convention.

XII. SUMMARIZING THE SUMMARY

Nevada is a highly individualistic and libertarian state. Moreover, its government is pretty firmly in the hands of a simple majority of voters and legislators. The fact that multiple forms of direct democracy are available to Nevada voters, such as the initiative, recall, and referendum, and the fact that a simple majority vote of 50% plus 1 vote or more is enough to approve initiatives, referenda, and recalls is further testimony of firm majority rule in Nevada. However, in addition to libertarian provisions there are egalitarian and anti-majoritarian provisions in the state constitution. Slavery had to be prohibited in order for Nevada to join the union in 1864, right at the end of the American civil war. There are many civil liberties and civil rights in the state constitution, although a simple majority could take them out. The federal constitution, however, would still provide protection for Nevadans should that occur. It takes a super-majority vote of two-thirds in each chamber of the Nevada
legislature to raise taxes, notwithstanding a Nevada Supreme Court decision to ignore that provision in favor of what it considered a higher priority (education). The deference traditionally paid to the legislature and to voters keeps Nevada peaceful. People will accept a loss if they believe they lost fairly. Fairness can be defined in several ways. Democracy is not fair, but it is the most fair of all possible alternative systems. Democracy forces negotiation and compromise, which in the end almost everyone can live with except for the most extreme radicals among us. So long as Nevada maintains its traditional ways of government, deference to voters and elected officials it should suffer from very little political violence and conflict.