

THE RULE OF LAW



BY SCOTT G. WASSERMAN, ESQ.

ORIGIN OF THE NEVADA RULE OF LAW

At the request of the State Bar of Nevada's Immediate Past President Gene Leverty, the Nevada Lawyer Editorial Board agreed to feature a discussion on the Rule of Law in each of the 2018 issues of *Nevada Lawyer*. Past columns have discussed the American rule of law, and international and historical rules of law. In this month's column, we examine the origin of Nevada's Rule of Law, which lies within the first written code of laws in Nevada: the Nevada Constitution, adopted in 1864. The Nevada Constitution established the basis of the system of all state and local rules of law. All persons, including the state and local governments, must operate within the constraints of the Nevada Constitution.

The first Nevada constitutional convention convened on November 3, 1863, and met for 32 days, ending on December 12, 1863. Of the 39 delegates to the 1863 constitutional convention, all but five had come from California and all but two had been in the territory for fewer than five years.¹ The proposed Nevada Constitution was based largely on the Constitution of the State of California, which in turn was similar to the New York State Constitution.² The first constitutional convention was authorized only by the Nevada Territorial Legislature of 1862 and did not have the sanction of Congress.³ When submitted to the people for a vote, the 1863 constitution failed to receive approval by the electorate, as it was overwhelmingly defeated, reportedly largely due to opposition to the taxation of the mining industry provisions and the opposition to the inclusion of a slate of state officers.

On March 21, 1864, Congress approved the Enabling Act "(t)o enable the People of the Territory of Nevada to form a Constitution and State Government and for the admission of such State into the Union on an equal footing

with the Original States." The act included the following requirements:

1. The new State Constitution must be republican in nature and not repugnant to the U.S. Constitution or the Declaration of Independence;
2. There shall be no slavery or involuntary servitude, other than for punishment of crimes, without the consent of the U.S. and the people of Nevada;
3. The Constitutional Convention must disclaim all rights to unappropriated public lands in Nevada;
4. Land owned by U.S. citizens outside Nevada must not be discriminated against in taxation; and
5. There must be no taxation of federal property by the state.⁴

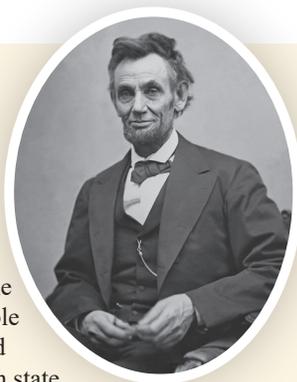
On May 2, 1864, James W. Nye, Governor of the Territory of Nevada, issued a Proclamation to form the constitutional convention. The congressional act required that the members of the convention for framing the constitution shall, after organization, on behalf of the people of the Territory, adopt the Constitution of the United States. Compliance with this mandate is evidenced in the first clause of the Nevada Constitution, labeled "Preliminary Action," expressly adopting the Constitution of the United States.

The 1864 constitutional convention first met on July 4, 1864, and despite its defeat in the 1863 election, the final version of the constitution proposed by the 1863 constitutional convention served as the starting point for the 1864 constitutional convention⁵. To eliminate the opposition to the 1863 version, the taxation on mining provision was changed to provide for taxation on only the net proceeds of mines, and no slate of state officers was attached to the constitution adopted by the second constitutional convention on July 27, 1864. This time, the electorate overwhelmingly approved the Nevada Constitution on September 7, 1864.

Pursuant to the congressional Enabling Act, President Abraham Lincoln had the authority to review the Nevada Constitution for compliance with the Enabling Act and to admit Nevada to the Union. Upon the president's receipt of the Nevada Constitution (transmitted via the reportedly longest and most expensive telegraph to date), President Lincoln admitted Nevada to the Union (as the 36th State) by Proclamation on October 31, 1864.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA:

A Proclamation.



WHEREAS the congress of the United States passed an act, which was approved on the 21st day of March last, entitled “An act to enable the people of Nevada to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states;”

And whereas, the said constitution and state government have been formed, pursuant to the conditions prescribed by the fifth section of the act of congress aforesaid, and the certificate required by the said act, and also a copy of the constitution and ordinances, have been submitted to the President of the United States:

Now, therefore, be it known, that I, ABRAHAM LINCOLN, President of the United States, in accordance with the duty imposed upon me by the act of congress aforesaid, do hereby declare and proclaim that the said State of Nevada is admitted into the Union on an equal footing with the original states.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington this thirty-first day of October, in the year of our Lord one thousand eight hundred and sixty-four, and of the Independence of the United States the eighty-ninth.

(L. S.) ABRAHAM LINCOLN.

By the President:

William H. Seward, *Secretary of State.*

Nevada continues to operate under its original constitution adopted in 1864 (and amended throughout the years). According to the Nevada State Archives, less than half of the United States operate under their original constitutions today, and fewer than a dozen states have constitutions older than Nevada’s. **NL**

1. Political History of Nevada 2016, p. 133 (issued by Nevada Secretary of State Barbara Cegavske, produced jointly with the Research Division of the Nevada Legislative Counsel Bureau).
2. Ibid.
3. Ibid., p.134.
4. Ibid., p.135.
5. Nevada Territory: First Constitutional Convention, 1863, Nevada State Library and Archives.

SCOTT WASSERMAN is Emeritus Chief Executive Officer and Special Counsel to the Board of Regents of the Nevada System of Higher Education, and is of counsel with Mark A. Chapleau, Member, Weston Patrick Professional Association, with practice area emphasis in Section 529 College Savings Plans and Prepaid Tuition Plans, and Section 529A ABLE Plans. Previously Wasserman served as a deputy attorney general in the Civil Division of the Office of the Attorney General and served the Nevada State Legislature as Chief Deputy Legislative Counsel.

Congratulations to Bill Peterson on receiving the prestigious President’s Award from the Nevada State Bar for 2018.

Thank you for your life-long commitment and dedication to our profession. We are incredibly proud to call you our colleague and more importantly, our friend.

Best wishes from your Snell & Wilmer family.



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