

# THE UNKNOWN NEVADA CONSTITUTION, AND YOUR UNUSED RIGHTS.



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Ask your average Nevadan what legal document safeguards their fundamental rights, and—if they answer at all—they might mention the U.S. Constitution or maybe the Declaration of Independence. Good answers, but incomplete. Unless you call Washington D.C. home, you live under the protective umbrella of two constitutions: federal and state. Both are bulwarks for liberty and equality, yet the U.S. Constitution hogs the attention.

When we advise clients on legal options, they are often surprised at the many ways the Nevada Constitution speaks to their issues, answers their questions, or supports their positions. Like most state constitutions, the Nevada Constitution protects Nevadans in more ways than its federal sibling, but few Nevadans seem to care. This widespread tepidity towards Nevada's highest law means leaving some of our rights on the table—unnoticed, unused, and unloved.

Although the state and federal constitutions do share many core features, including specific guarantees of certain rights, there are significant structural differences between them. The U.S. Constitution merely pays the minimum wage on protected rights, setting the floor under which state and federal law cannot go. The Nevada Constitution, however, rises above the federal floor, ultimately extending as high as we want.

For instance, if you think property, speech, or abortion deserve greater respect than the U.S. Constitution or the new Roberts Court give, the Nevada Constitution can make it so.

Consider the following:

If you are ever in court, it is likely to be a state court, overseen by an elected state judge. Our fine state judiciary not only has the final say on the Nevada Constitution, but they also understand and have to live under the consequences of their own decisions. How they interpret the Nevada Constitution will likely have more real-world effect on Nevadans than the vast majority of cases the U.S. Supreme Court decides.

Furthermore, unlike federal constitutional fights, winning in court is not the only avenue for constitutional change. While the U.S. Constitution is almost impossible to amend, the Nevada Constitution is not. All it takes is two majority votes in two consecutive Nevada elections, and your constitutional hopes will become a legal reality.

Even now, Nevadans of all ideological stripes will find something to love.

For conservatives, the Nevada Constitution has stronger language for religious liberty, gun rights, and free speech. It better protects private property, and sets rigid boundaries between the three branches of government. It makes it harder to spend money, write regulations, and raise taxes. And it gives Nevadans the power to draft laws and remove elected officials.

For progressives, the Nevada Constitution codifies both economic and educational rights, caps campaign contributions, and makes the right to vote explicit. It includes superior protections for the press, a higher wall between church and state, and a “forever” “inviolable” right to a jury trial.

In short, the Nevada Constitution already gives us more than the federal constitution; it is easier to amend, easier to argue, more likely to be relevant in the court where we are more likely to appear, and interpreted by judges more responsive to our needs.

Given the above, Nevadans do themselves a disservice when they ignore their state constitution. If a federal right exists, a similar state right probably exists, too, maybe with broader, more certain textual support. If a federal right does not exist, a state right may fill the void. Either way, there is simply no good reason to leave the Nevada Constitution on the shelf.

As U.S. Supreme Court Justice Brennan said, “[w]ithout the independent protective force of state [constitutional] law . . . the full realization of our liberties cannot be guaranteed.” We agree. Take some time to read the Nevada Constitution. Peruse its long list of inalienable rights and extra procedural safeguards. We expect you will be amazed and inspired.

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