

## A NEVADA LOTTERY: IMPROVING THE ODDS FOR NEVADA'S PUBLIC EDUCATION SYSTEM

Michael Linton\*

### INTRODUCTION

In 2016, the Powerball lottery jackpot soared to a record setting \$1.586 billion, the highest lottery jackpot in United States history.<sup>1</sup> Only six states were not part of the action, and surprisingly one of those states was Nevada, the home of the single largest gambling market in the country.<sup>2</sup> Since the Nevada Constitution was ratified in 1864, lotteries have been prohibited under Article 4 Section 24.<sup>3</sup> Nevertheless, gambling is deeply entrenched in Nevada's history, despite laws that were put in place to prevent it.<sup>4</sup> Even when all games of chance were outlawed in 1909, widespread gambling persisted throughout the state.<sup>5</sup>

---

\* Editor-in-Chief, *UNLV Gaming Law Journal*, J.D. Candidate, May 2018, William S. Boyd School of Law, University of Nevada Las Vegas.

I dedicate this note to my daughter, Aubrey Elle Linton, who was born shortly before I began my research on this body of work. It is my hope that Nevada's public education system will see tremendous improvement before she becomes of school age. I also dedicate this note to the memory of my Aunt, Sheryl Mitrecic, who passed away after a long battle with cancer in 2017. She was a wonderful person and a passionate educator in Maryland's public-school system. Finally, I would like to thank my wife, Emily Linton, for her ongoing encouragement and support.

<sup>1</sup> *History*, POWERBALL, [http://www.powerball.com/pb\\_history.asp](http://www.powerball.com/pb_history.asp) (last visited Aug. 22, 2017).

<sup>2</sup> *The 6 States Where You Can't Play Powerball*, ABC NEWS (Jan. 13, 2016, 12:47 PM), <http://abcnews.go.com/US/states-play-powerball/story?id=36267614> [hereinafter ABC NEWS]. See also Robert Ferris, *These 13 States Raked In \$34B In Gaming Revenue*, USA TODAY (Apr. 27, 2014, 7:00 AM), <http://www.usatoday.com/story/money/business/2014/04/27/top-gambling-states/8168681/> (Nevada ranking number one in the United States with \$10.86 billion in gaming revenue in 2014).

<sup>3</sup> NEV. CONST. art. IV, § 24; Sean Whaley, *Assemblyman Pushes for Lottery at Nevada Legislature*, L.V. REV.-J. (Mar. 19, 2015, 5:57 PM), <https://www.reviewjournal.com/news/politics-and-government/nevada/assemblyman-pushes-for-lottery-at-nevada-legislature/>.

<sup>4</sup> *History of Gaming in Nevada*, NEV. RESORT ASS'N, <http://www.nevadaresorts.org/about/history/> (last visited Sept. 18, 2017).

<sup>5</sup> *Id.*

In 1931, Assembly Bill 98 was signed into law, making most forms of gambling officially legal throughout Nevada.<sup>6</sup> Eighty-seven years have passed since the Legislature signed Assembly Bill 98 into law, and Nevada is still without a form of gambling that is allowed in a majority of the United States.<sup>7</sup> While most states eventually amended their constitution to allow lotteries, Nevada has firmly and consistently maintained their prohibition.<sup>8</sup> In 2009, the Nevada Assembly passed a bill and brought the state close to allowing a lottery, but the bill ultimately failed when it died in the Senate.<sup>9</sup> The failed 2009 lottery bill was certainly not unexpected based on Nevada's legislative history.<sup>10</sup> Since 1975, there have been nearly thirty failed attempts to establish a state lottery in Nevada.<sup>11</sup>

Most states use lottery proceeds to fund public services with a heavy focus on education.<sup>12</sup> It is no secret that Nevada has the lowest ranked public education system in the country.<sup>13</sup> It is odd that a state with such poor public education ratings is not pursuing every revenue producing mechanism possible to help improve the issue.<sup>14</sup> Perhaps it is even more strange that the state with the largest gambling market in the country does not allow a type of gambling that is legal in almost every other state.<sup>15</sup> The general explanation for this anomaly is that the Nevada gaming industry does not want a lottery because of the perceived competition it would bring.<sup>16</sup>

In 1990, Nevada voters changed the constitution to allow non-profit organizations and charitable groups to hold small lotteries.<sup>17</sup> Still, state lotteries

---

<sup>6</sup> *Id.*

<sup>7</sup> See NEV. CONST. art. IV, § 24; ABC NEWS, *supra* note 2; *A Bit of History: Nevada Gambling Legalized*, 15 UNLV RES. & GAMING REV. J. 95, 95 (2005), <http://digitalscholarship.unlv.edu/cgi/viewcontent.cgi?article=1279&context=grnj>.

<sup>8</sup> See N.H. LOTTERY, <https://www.nhlottery.com/About-Us/History.aspx> (last visited Aug. 23, 2017); NEV. CONST. art. IV, § 24 (showing that the Nevada Constitution has never been amended to allow lotteries).

<sup>9</sup> Ed Vogel, *State Lottery Bill Appears Dead – Again*, L.V. REV.-J. (May 12, 2009, 9:00 PM), <http://www.reviewjournal.com/news/nevada-legislature/state-lottery-bill-appears-dead-again>.

<sup>10</sup> Whaley, *supra* note 3.

<sup>11</sup> *Id.*

<sup>12</sup> Kevin P. Brady & John C. Pijanowski, *Maximizing State Lottery Dollars for Public Education: An Analysis of Current State Lottery Models*, 7 J. OF EDUC. RES. & POL'Y STUD. 20, 21 (2007).

<sup>13</sup> Cy Ryan, *Nevada Ranks Last for Quality Education, New Report Says*, L.V. SUN (Jan 5, 2017, 2:09 PM), <https://lasvegassun.com/news/2017/jan/05/nevada-ranks-last-for-quality-education-new-report/>.

<sup>14</sup> See *id.*; see also NEV. CONST. art. IV, § 24.

<sup>15</sup> ABC NEWS, *supra* note 2; Ferris, *supra* note 2.

<sup>16</sup> See ABC NEWS, *supra* note 2 (statement of Gaming Control Board Chairman, A.G. Burnett) ("I think it's the gaming industry that doesn't want to have a lottery," he said. "That's pretty much the prevailing view even today.").

<sup>17</sup> See David McGrath Schwartz, *Why Nevada Offers Just About Every Type of Gambling Possible — Except a Lottery*, L.V. SUN (Apr. 3, 2012, 2:00 AM), <http://>

remained prohibited, which continued to fuel legislative efforts and academic scrutiny.<sup>18</sup> Yet, no one has been able to create a lottery proposal that could pass the legislature.<sup>19</sup> In order for a lottery bill to be successful, it must be positioned to mitigate the opposition that has incessantly defeated legislative efforts in the past.<sup>20</sup>

This note introduces a proposal to amend Article 4 Section 24 of the Nevada Constitution to allow state lotteries. The purpose of this amendment will be to provide a dedicated source of funding to improve the quality of Nevada's public education system. This proposal distinguishes itself from those that have failed because it respectfully considers the gaming industry's opposition to a Nevada lottery and it is positioned to mitigate the concerns that are fueling that opposition.

Part I of this note addresses why a lottery is needed to improve Nevada's public education system. Part I (A) reviews the status of Nevada's public-school system and the troubles that it faces. Part I (B) analyzes the correlation between states that rank low for public education and states that do not have a lottery. Part I (C) provides an idea of the opportunity costs associated with Nevada's ban on lotteries by examining the revenue that is displaced when a resident goes out of state to purchase a lottery ticket.

To gain a better understanding of how lottery proceeds can be used to benefit public education, Part II discusses how lotteries operate, including how profits are distributed between the state and individual lottery retailers. After providing a detailed understanding of what lotteries are and how they operate, this note will discuss their history and how they have been used for public fundraising purposes. Part III (A) reviews the history of lotteries in the United States and the reason that states prohibited them in the first place. Part III (B) discusses the history of lotteries in Nevada, including the relevant Nevada Supreme Court rulings. Part III (C) addresses why Nevada *still* does not have a lottery when it allows nearly every other form of gambling.<sup>21</sup>

Finally, Part IV introduces a detailed proposal for amending the Nevada Constitution to allow lotteries. Part IV (A) explains the available options for amending the Nevada Constitution and which option is most practical for a lottery proposal. Part IV (B) details how a lottery bill must be positioned to garner support. In closing, Part IV (C) will propose an amendment to Article 4

---

lasvegassun.com/news/2012/apr/03/why-nevada-offers-just-about-every-gambling-option/.

<sup>18</sup> See Benjamin K. Boulton, *Implementing a State Lottery in Nevada*, 1337 UNLV THESES, DISSERTATIONS, PROF. PAPERS, AND CAPSTONES (2012), <http://digital.scholarship.unlv.edu/cgi/viewcontent.cgi?article=2339&context=thesesdissertations>.

<sup>19</sup> See Schwartz, *supra* note 17.

<sup>20</sup> See *id.* (stating that opposition of gaming lobbyists have ultimately defeated lottery bills throughout Nevada's history).

<sup>21</sup> See NEV. RESORT ASS'N, *supra* note 4; see also ABC News, *supra* note 2 (emphasis added).

Section 24 that considers the collective points of this note and offers a way forward for a Nevada lottery.

# I. WHY NEVADA NEEDS A LOTTERY TO IMPROVE PUBLIC EDUCATION

## A. *The State of Nevada's Public Education System*

Nevada's public education system is currently ranked as the lowest in the country by the Annual Quality Counts Report.<sup>22</sup> The Annual Quality Counts Report issues report cards and assigns letter grades for public education in the fifty states, the District of Columbia, and the United States overall.<sup>23</sup> Letter grades are determined using the report card's three graded categories: Chance for Success, K-12 Achievement, and School Finance.<sup>24</sup> The Chance for Success category "captures the role of education in a person's life from cradle to career."<sup>25</sup> The K-12 Achievement category evaluates the performance of "public schools against [eighteen] indicators capturing: current achievement levels, improvements over time, and poverty-based gaps."<sup>26</sup> Finally, the School Finance category "examines educational expenditure patterns and the distribution of those funds within states."<sup>27</sup>

In 2018, Nevada was given a 'D+' for Chance for Success, a 'D' for K-12 Achievement, and a 'D-' for School Finance, ultimately ranking last in the country.<sup>28</sup> The latest data from the National Center for Education Statistics indicates that Nevada had the fifth highest pupil per teacher ratio in the country, with 21.2 students per teacher, during the 2014-2015 school year.<sup>29</sup> Studies show a correlation between class size and student achievement with children in kindergarten through third grade.<sup>30</sup> In such studies, student achievement

<sup>22</sup> *Quality Counts 2018, Grading the States*, EDUC. WK. (JAN. 7, 2018), <https://www.edweek.org/ew/collections/quality-counts-2018-state-grades/report-card-map-rankings.html> [hereinafter EDUC. WK. 2018]. See Ryan, *supra* note 13.

<sup>23</sup> *Quality Counts Introduces New State Report Card; U.S. Earns C, and Massachusetts Ranks First in Nation*, EDUC. WK. (Jan. 8, 2015, 12:01 AM), [http://www.edweek.org/media/qualitycounts2015\\_release.pdf](http://www.edweek.org/media/qualitycounts2015_release.pdf) [hereinafter EDUC. WK.-*New State Report Card*].

<sup>24</sup> *Quality Counts Marks 20 Years Report Explores New Directions in Accountability*, EDUC. WK. (Jan. 7, 2016), [http://www.edweek.org/media/qualitycounts2016\\_release.pdf](http://www.edweek.org/media/qualitycounts2016_release.pdf) [hereinafter EDUC. WK.-*20 Years Report*].

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> EDUC. WK. 2018, *supra* note 22.

<sup>29</sup> The pupil/teacher ratio is the number of students for every full-time equivalent teacher. See Mark Glander, *Selected Statistics from the Public Elementary and Secondary Education Universe: School Year 2014-15*, NAT'L CTR. FOR EDUC. STAT. (Sept. 2016), <http://nces.ed.gov/pubs2016/2016076.pdf>.

<sup>30</sup> *Class Size and Student Achievement: Research Review*, CTR. FOR PUB. EDUC., <http://www.centerforpubliceducation.org/Main-Menu/Organizing-a-school/Class-size-and-student-achievement-At-a-glance/Class-size-and-student-achievement->

Spring 2018]

A NEVADA LOTTERY

257

increased as class size decreased.<sup>31</sup> The national average for the 2014-2015 school year was 16.1 students per teacher.<sup>32</sup> That means Nevada teachers were responsible for educating approximately five more students than their national counterparts.<sup>33</sup>

Public education was a primary focus of Governor Sandoval in the 2015 legislative session.<sup>34</sup> His plan included efforts focused on students learning to read by the third grade and the implementation of a statewide all-day kindergarten program.<sup>35</sup> Assembly Bill 278, which requires the Nevada Department of Education to “establish methods to monitor school district plans for class-size reduction,” was among the education measures that the Governor signed into law.<sup>36</sup> Thus, it is clear that the Nevada Legislature recognizes the issue with the state’s public education system and is setting goals to improve it.<sup>37</sup> To achieve these goals, Nevada lawmakers approved Governor Sandoval’s \$2.8 billion education budget for the next two years — an increase in excess of \$400 million from the previous education budget.<sup>38</sup> To fund the increased budget, lawmakers extended tax increases on payroll and sales taxes, which were originally imposed during the recession of 2009 and set to expire in 2011.<sup>39</sup> The measure also required additional payroll taxes, new business filing fees, and the creation of a gross receipts tax on businesses.<sup>40</sup>

Opponents of the tax increases said “[t]he leadership in both houses should be ashamed of themselves to force through the largest tax increase in Nevada’s history that includes the type of tax the voters did not support.”<sup>41</sup> A state lottery can provide the funding necessary to support efforts to improve the quality of

---

Research-review.html (last visited Aug. 23, 2017).

<sup>31</sup> *Id.*

<sup>32</sup> Glander, *supra* note 29.

<sup>33</sup> *See id.*

<sup>34</sup> Sandra Chereb & Sean Whaley, *Nevada Legislature OKs Record Budget, Adjourns*, L.V. REV.-J. (June 2, 2015, 12:28 AM) <http://www.reviewjournal.com/news/nevada-legislature/nevada-legislature-oks-record-budget-adjourns>.

<sup>35</sup> *Id.*

<sup>36</sup> Todd M. Butterworth, *Fact Sheet: Class-Size Reduction*, RES. DIVISION, LEGIS. COUNS. BUREAU (2015), <https://www.leg.state.nv.us/Division/Research/Publications/Factsheets/Class-SizeReduction.pdf>

<sup>37</sup> *See id.*

<sup>38</sup> *See* Chereb & Whaley, *supra* note 34.

<sup>39</sup> *See id.*; *see also* Sandra Chereb, *Sunset Tax Plan Advances; Word Still Out on Sandoval Tax Deal*, L.V. REV.-J. (May 15, 2015, 10:45 PM), <https://www.reviewjournal.com/uncategorized/sunset-tax-plan-advances-word-still-out-on-sandoval-tax-deal/> [hereinafter Chereb, *Sunset Tax*] (stating that the sales and payroll taxes were initially set to expire in 2011).

<sup>40</sup> *See* Kyle Roerink, *Nevada Senate Sends \$1.5 Billion Tax Plan to Governor*, L.V. SUN (June 1, 2015, 10:26 AM), <https://lasvegassun.com/news/2015/jun/01/nevada-senate-sends-15-billion-tax-plan-governor/>.

<sup>41</sup> *Id.*

Nevada's public education system without the need for increasing taxes.<sup>42</sup> Perhaps most importantly, a state lottery would provide a *permanent* source of additional funding for public education, unlike the action Legislators took in 2015 by extending the taxes that were supposed to "sunset" or expire in 2011.<sup>43</sup>

*B. How States Without a Lottery Rank for Public Education*

In addition to Nevada, there are five other states that do not have a lottery: Alabama, Alaska, Hawaii, Mississippi, and Utah.<sup>44</sup> In 2018, the six states without a lottery ranked on the Annual Quality Counts Report as follows: Alabama - #44, Alaska - #23, Hawaii - #26, Mississippi - #49, Utah - #31, and Nevada - #51.<sup>45</sup> According to the latest report released by the National Center for Education Statistics (NCES), the two highest ranking states without a lottery, Alaska and Hawaii, had the highest expenditures per pupil in comparison to the other states without a lottery.<sup>46</sup>

In the 2013-2014 school year, Alaska spent \$18,466 and Hawaii spent \$12,400 per pupil.<sup>47</sup> This is significantly higher than the \$9,036 spent by Alabama, \$8,265 spent by Mississippi, \$6,546 spent by Utah, and the \$8,275 spent by Nevada during the same school year.<sup>48</sup> The average expenditures per pupil in the United States for that period was \$11,066.<sup>49</sup> The significant difference in spending by Alaska and Hawaii could explain why those states ranked so much higher than the others without a lottery.<sup>50</sup>

One the next page, Table 1 summarizes how each of the states without a lottery ranked on the Annual Quality Counts Report from 2010 to 2018, along with their nine-year average.<sup>51</sup>

<sup>42</sup> See *Frequently Asked Questions*, NORTH AM. ASS'N OF ST. AND PROVINCIAL LOTTERIES, <http://www.naspl.org/faq> (last visited Aug. 22, 2017) [hereinafter NASPL FAQs] (stating that \$400+ billion has been raised for public programs in the United States since 1964).

<sup>43</sup> See Chereb, *Sunset Tax*, *supra* note 39.

<sup>44</sup> ABC NEWS, *supra* note 2.

<sup>45</sup> EDUC. WK. 2018, *supra* note 22.

<sup>46</sup> Stephen Q. Cornman & Lei Zhou, *Revenues and Expenditures for Public Elementary and Secondary Education: School Year 2013-14 (Fiscal Year 2014)*, NAT'L CTR. FOR EDUC. STAT. 2 (2016), <http://nces.ed.gov/pubs2016/2016301.pdf>.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> See *id.*

<sup>51</sup> See *Report Card Grades States on Education Performance, Policy; Nation Scores High on Standards Policies, But Struggles to Provide Opportunities to Succeed*, EDUC. WK. (Jan. 14, 2010), [http://www.edweek.org/media/ew/qc/2010/QualityCounts2010\\_PressRelease.pdf](http://www.edweek.org/media/ew/qc/2010/QualityCounts2010_PressRelease.pdf); *Report Awards State Grades for Education Performance, Policy; Nation Earns a D-plus on Achievement, Some Movement Seen on Reform Initiatives Despite Recession*, EDUC. WK. (Jan. 11, 2011), [http://www.edweek.org/media/ew/qc/2011/QualityCounts2011\\_PressRelease.pdf](http://www.edweek.org/media/ew/qc/2011/QualityCounts2011_PressRelease.pdf); *Report Awards Grades for Education Performance, Policy; Nation Earns a C, Maryland*

Spring 2018]

A NEVADA LOTTERY

259

Table 1

Annual Quality Counts Rankings of States without a Lottery						
	<u>Alabama</u>	<u>Alaska</u>	<u>Hawaii</u>	<u>Mississippi</u>	<u>Nevada</u>	<u>Utah</u>
2010	31	42	26	47	50	38
2011	25	46	20	48	45	41
2012	32	46	16	45	48	42
2013	30	47	29	48	50	38
2014	31	48	27	47	50	37
2015	45	26	23	51	50	35
2016	47	20	25	50	51	32
2017	45	24	25	50	51	32
2018	44	23	26	49	51	31
Average	37	36	24	48	50	36

While this data does not provide any firm conclusions, it does illustrate that the states without a lottery have not ranked in the top ten for the past several years.<sup>52</sup> Additionally, it illustrates that four of the six states had quite dismal rankings for the past several years.<sup>53</sup> Most significantly, this data shows that Nevada consistently ranks at the bottom with an average ranking of 50 for the past nine-years.<sup>54</sup> Although there is no smoking gun that directly correlates the absence of a lottery with low public education rankings, it is clear that none of the states without a lottery are considered top performers in the Annual Quality Counts Reports.<sup>55</sup>

### C. Nevada Public Education Funding is Going to Neighboring State Lotteries

A major issue with the absence of a lottery in Nevada is that revenues are drawn out of the state because Nevada residents are purchasing lottery tickets in Arizona and California.<sup>56</sup> When the Powerball jackpot reached over \$1.5

---

*Ranks First for Fourth Straight Year*, EDUC. WK. (Jan. 12, 2012), [http://www.edweek.org/media/qualitycounts2012\\_release.pdf](http://www.edweek.org/media/qualitycounts2012_release.pdf); *State and National Grades Issued for Education Performance, Policy; U.S. Earns a C-plus, Maryland Ranks First for Fifth Straight Year*, EDUC. WK. (Jan. 10, 2013), [http://www.edweek.org/media/QualityCounts2013\\_Release.pdf](http://www.edweek.org/media/QualityCounts2013_Release.pdf); *2014 Education Week Quality Counts State Grade Ranking Analysis*, [https://docs.google.com/spreadsheets/d/e/2PACX-1vQ599PSjxH\\_m8aW\\_e6tFBm5z1ZWg-w5tE7nlj8wwy9PwUhyVYYxB\\_Zay21muLZ9Pq0-T8aerCFOCY7z/pubhtml?gid=0&single=true](https://docs.google.com/spreadsheets/d/e/2PACX-1vQ599PSjxH_m8aW_e6tFBm5z1ZWg-w5tE7nlj8wwy9PwUhyVYYxB_Zay21muLZ9Pq0-T8aerCFOCY7z/pubhtml?gid=0&single=true); EDUC. WK.-*New State Report Card*, *supra* note 23; EDUC. WK.-*20 Years Report*, *supra* note 24; *Quality Counts Report Examines State Scramble to Put Federal ESSA Law Into Effect*, EDUC. WK. (Jan. 4, 2017), <https://secure.edweek.org/media/quality-counts-2017-news-release.pdf>; EDUC. WK. 2018, *supra* note 22.

<sup>52</sup> See *supra* note 51.

<sup>53</sup> See *id.*

<sup>54</sup> See *id.*

<sup>55</sup> See *id.*

<sup>56</sup> See *Where Should Nevada Residents go to Buy Lottery Tickets?*, KTNV (Jan. 12, 2016, 11:39 AM), <http://web.archive.org/web/20170101141410/http://www.ktnv>

billion in 2016, California sold \$96.1 million worth of tickets in two days.<sup>57</sup> The California Lottery reports that the Primm Valley Lotto Store, which sits just over the Nevada-California border, is the busiest lottery retailer in California.<sup>58</sup> The Gold Ranch, which is just eleven miles west of Reno, is also a top California lottery ticket retailer.<sup>59</sup>

While California does not specifically track the amount of tickets sold to Nevadans, it can reasonably be inferred that Nevadans are responsible for much of the ticket sales at these stores.<sup>60</sup> In 2008, a spokesman for the California Lottery reported that the Primm Valley Lotto Store was the number one ticket retailer in the state with an average of \$250,425 in ticket sales per week, and the Gold Ranch was the number two ticket retailer with an average of \$121,020 in ticket sales per week.<sup>61</sup> That means in 2008, a lottery retailer located in a rural town in the middle of the desert sold more tickets than any store in Los Angeles — a city with a population in excess of 3.8 million people at that time.<sup>62</sup> That is a stunning statistic that illustrates the fundraising potential of a Nevada lottery.<sup>63</sup> Nevada should capture this revenue and use it to benefit the state's failing public education system.<sup>64</sup>

## II. HOW LOTTERY REVENUE CAN IMPROVE PUBLIC EDUCATION IN NEVADA

To fully comprehend how a lottery can help improve Nevada's public education system, it is important to understand what a lottery is and how a lottery operates. Nevada's statutory definition of a lottery is:

[A]ny scheme for the disposal or distribution of property,  
by chance, among persons who have paid or promised to

---

.com/news/where-should-nevada-residents-go-to-buy-lottery-tickets.

<sup>57</sup> See Andi O'Rourke, *How Many Powerball Tickets Were Sold for the \$1.5 Billion Jackpot? Don't Feel Too Bad If You Lost*, BUSTLE (Jan. 13, 2016), <https://www.bustle.com/articles/135525-how-many-powerball-tickets-were-sold-for-the-15-billion-jackpot-dont-feel-too-bad-if>.

<sup>58</sup> *Imagine the Possibilities, California Lottery Report to the Public for Fiscal Year Ended June 30, 2016*, CAL. LOTTERY (Jun. 30, 2016), [http://static.www.ca lottery.com/~media/Publications/Reports\\_to\\_the\\_Public/LotteryAR2016English.pdf](http://static.www.ca lottery.com/~media/Publications/Reports_to_the_Public/LotteryAR2016English.pdf).

<sup>59</sup> See Steve Friess, *A Nevada Lottery? The Line Forms in California*, N.Y. TIMES (Apr. 24, 2009), <http://www.nytimes.com/2009/04/25/us/25nevada.html>.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> See *id.*; see also *Public Data: Population in the U.S.*, GOOGLE, [https://www.google.com/publicdata/explore?ds=kf7tgg1uo9ude\\_&met\\_y=population&idim=place:0644000:1714000&hl=en&dl=en#!ctype=l&strail=false&bcs=d&n selm=h&met\\_y=population&scale\\_y=lin&ind\\_y=false&rdim=country&idim=place:0644000&ifdim=country&hl=en\\_US&dl=en&ind=false](https://www.google.com/publicdata/explore?ds=kf7tgg1uo9ude_&met_y=population&idim=place:0644000:1714000&hl=en&dl=en#!ctype=l&strail=false&bcs=d&n selm=h&met_y=population&scale_y=lin&ind_y=false&rdim=country&idim=place:0644000&ifdim=country&hl=en_US&dl=en&ind=false) (last visited Aug. 23, 2017).

<sup>63</sup> See Friess, *supra* note 59.

<sup>64</sup> See *id.*



pay any valuable consideration for the chance of obtaining that property, or a portion of it, or for any share or interest in that property upon any agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle or gift enterprise, or by whatever name it may be known.<sup>65</sup>

In general, a lottery involves the drawing of a fixed set of numbers, where the player holding the ticket matching the numbers drawn is deemed the winner of the jackpot.<sup>66</sup> In the event that there is no winning ticket, the jackpot will roll over to the next drawing, ultimately compounding the prize jackpot.<sup>67</sup>

The size of a lottery jackpot is directly correlated with the odds configured for that particular lottery.<sup>68</sup> If the odds of winning are more favorable to the player, this will result in more winning tickets, thereby reducing the jackpot size because it will hit more frequently and not have a chance to grow through rollover accumulation.<sup>69</sup> Conversely, if the odds of winning are less favorable to the player, the jackpot will grow much larger because winning tickets will occur less frequently and the jackpot purse will have more time to accrue.<sup>70</sup> A lottery operator must find the optimal balance in the odds it offers because a game with decent odds but a weak jackpot will draw less players.<sup>71</sup> Moreover, a lottery with a large jackpot but weak odds will reduce the amount of people willing to play.<sup>72</sup>

Lottery odds are calculated using combinatorics, an applied method of mathematics that deals with the enumeration, combination, and permutation of sets of elements.<sup>73</sup> A lottery operator can change the odds of winning by

---

<sup>65</sup> NEV. REV. STAT. § 462.105 (2016).

<sup>66</sup> See *Lottery*, CAMBRIDGE ENG. DICTIONARY, <http://dictionary.cambridge.org/dictionary/english/lottery> (last visited Aug. 22, 2017).

<sup>67</sup> See Jeff Barker, *Statisticians Question Logic of Buying Multiple Lottery Tickets as Jackpot Rises to \$1.5 B*, THE BALT. SUN (Jan. 11, 2016, 9:02 PM), <http://www.baltimoresun.com/business/bs-bz-powerball-maryland-odds-20160111-story.html>; *God Bless the Lottery Rollovers! Let the Jackpot Miracle Grow!*, <http://www.lottoexposed.com/lottery-rollovers-jackpot-miracle-grow/> (last visited Oct. 11, 2017).

<sup>68</sup> See Karim Nice, *How Lotteries Work*, HOWSTUFFWORKS.COM (Mar. 27, 2001), <http://entertainment.howstuffworks.com/lottery.htm>.

<sup>69</sup> See *id.*

<sup>70</sup> See *id.*

<sup>71</sup> See *id.*

<sup>72</sup> See *id.*

<sup>73</sup> See Jo Craven McGinty, *Behind the Numbers: How to Calculate Odds*, WALL ST. J. (Jan. 15, 2016, 1:13 PM), <http://blogs.wsj.com/numbers/behind-the-numbers-how-to-calculate-odds-2170>; see also Eric W. Weisstein, *Combinatorics*, WOLFRAM MATHWORLD, <http://mathworld.wolfram.com/Combinatorics.html> (last visited Aug. 23, 2017).

increasing the number of possible winning number combinations.<sup>74</sup> For example, the Powerball lottery consists of a game where five numbers are drawn from a drum with sixty-nine options.<sup>75</sup> A sixth number is drawn from a separate drum with twenty-six options.<sup>76</sup> To calculate the odds of the Powerball lottery, you start by determining the number of permutations for the first five numbers that are drawn from the drum with sixty-nine options.<sup>77</sup> No single number can be repeated, so for the first number, there are sixty-nine options, for the second number, there are sixty-eight options, and so on.<sup>78</sup> To calculate the number of permutations for the first five numbers you multiply:  $69 \times 68 \times 67 \times 66 \times 65 = 1,348,621,560$ .<sup>79</sup> Since the order of the numbers drawn for a Powerball winner do not matter, you take the number of permutations and divide it by the number of ways that the five numbers can be grouped together.<sup>80</sup> Five numbers can be grouped together in 120 ways.<sup>81</sup> Therefore, you divide:  $1,348,621,560 / 120 = 11,238,513$ .

However, that does not complete the calculation for the odds of winning the Powerball lottery, you must also account for the sixth number that is drawn from a drum with twenty-six different options.<sup>82</sup> To determine the ultimate odds, you multiply:  $11,238,513 \times 26 = 292,201,338$ . Thus, there are over 292 million ways that five different numbers drawn from the first drum could be matched with the single number drawn from the second drum, thereby making a ticket holders chance of winning the Powerball an astonishing 1 in 292 million.<sup>83</sup> The odds of winning the Powerball could be increased or decreased simply by adding more numbers to the drawing.<sup>84</sup> For instance, if the first five numbers were drawn from a drum with seventy different numbers instead of sixty-nine different numbers, the odds to win would be 1 in 314.6 million instead of 1 in 292 million.<sup>85</sup> Lotteries are attractive fundraising mechanisms because the odds are in the operator's favor and can be adjusted to ensure optimal profitability.<sup>86</sup>

Like any other business, lotteries must generate enough revenue in order cover expenses and ultimately turn a profit.<sup>87</sup> Lottery revenue is primarily

---

<sup>74</sup> See McGinty, *supra* note 73.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* ( $5 \times 4 \times 3 \times 2 \times 1 = 120$ ).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup>  $70 \times 69 \times 68 \times 67 \times 66 = 1,452,361,680$ .  $1,452,361,680 / 120 = 12,103,014$ .  $12,103,014 \times 26 = 314,678,364$ .

<sup>86</sup> See *id.*

<sup>87</sup> Wyolotto mentions that when it began it was a startup and now it has become an

generated through ticket sales.<sup>88</sup> A lottery's primary expenses include player prizes, retailer commissions, and operating costs.<sup>89</sup> The profits generated by state lotteries either go to the state's general fund or to a specified purpose, such as education.<sup>90</sup>

Generally, at least fifty percent of lottery revenues are retained for the payout of jackpot prizes.<sup>91</sup> Lottery retailer commissions vary from state-to-state, but tend to be around six percent on average.<sup>92</sup> Operation costs of a lottery also vary from state-to-state, but average at around five percent nationally.<sup>93</sup> That leaves approximately thirty-nine percent of lottery revenues as profit to be used for the purpose specified by the state.<sup>94</sup>

The lottery revenue that is retained as profit can provide a considerable source of funding to public programs.<sup>95</sup> For instance, the New York lottery had a record year in fiscal year 2015-2016 with \$3.30 billion contributed to education from its \$9.69 billion in gross sales.<sup>96</sup> Actual contributions to public programs vary from state to state, however, the North American Association of State and Provincial Lotteries (NASPL) indicates that over \$22 billion was collectively transferred to lottery beneficiaries throughout the United States in

---

established organization. It also mentions that with the support of lotto players, the organization was able to pay off their loan early. *See generally Giving Back*, WYOLOTTO, <http://wyolotto.com/lottery/giving-back-wyoming/> (last visited Nov. 3, 2016).

<sup>88</sup> *See e.g. ARK. DEP'T OF FIN. AND ADMIN. OFF. OF THE ARK. LOTTERY AN ENTERPRISE FUND OF THE ST. OF ARK.*, COMPREHENSIVE ANN. FIN. REP. FOR THE FISCAL YEAR ENDED JUNE 30, 2015, <http://myarkansaslottery.com/sites/default/files/pdfs/reports/CAFRFY15.pdf> (displaying that in 2015 the Arkansas lottery generated \$409,234,678 in total operating revenue; ticket sales accounted for over \$408 million of that revenue).

<sup>89</sup> *Id.*

<sup>90</sup> *See Brady & Pijanowski, supra* note 12.

<sup>91</sup> Nick Greene, *Where Does the Powerball Money Go?*, MENTAL FLOSS.COM (Jan. 12, 2016), <http://mentalfloss.com/article/73578/where-does-powerball-money-go>; Mona Chalabi, *What Percentage Of State Lottery Money Goes To The State?*, FIVETHIRTYEIGHT (Nov. 10, 2014, 5:29 PM), <https://fivethirtyeight.com/datalab/what-percentage-of-state-lottery-money-goes-to-the-state/>. *See Lottery Payouts and State Revenue, 2010*, NCSL, <http://www.ncsl.org/research/financial-services-and-commerce/lottery-payouts-and-state-revenue-2010.aspx> (last visited Aug. 23, 2017).

<sup>92</sup> *Lottery Sales*, NACS THE ASS'N FOR CONVENIENCE AND FUEL RETAILING, <http://www.nacsonline.com/Research/FactSheets/InsidetheStore/Pages/LotterySale sinConvenienceStores.aspx> (last visited Aug. 23, 2017) [hereinafter NACS].

<sup>93</sup> Chalabi, *supra* note 91.

<sup>94</sup> 50% prizes + 6% retailer commission = 56%. 56% + 5% administrative costs = 61%. 100% - 61% = 39%. Thus, 39% of lottery revenue is left as profit for the state specified use. *See Greene, supra* note 91; Chalabi, *supra* note 91.

<sup>95</sup> *See Fiscal Year 2015-2016 Year-End Review*, N.Y. LOTTERY, [http://nylottery.ny.gov/wps/wcm/connect/e4ce705f-d71d-4c2db47f5ae1368f61e8/annual\\_report\\_2016\\_finalv2.pdf?MOD=AJPERES](http://nylottery.ny.gov/wps/wcm/connect/e4ce705f-d71d-4c2db47f5ae1368f61e8/annual_report_2016_finalv2.pdf?MOD=AJPERES) (last visited Feb. 26, 2017).

<sup>96</sup> *Id.*

fiscal year 2016.<sup>97</sup> NASPL reports that this approximate \$22 billion in lottery revenue “helped fund essential services such as education, infrastructure, green space initiatives, elderly assistance and much, much more.”<sup>98</sup> Nevada could use lottery proceeds in the same way, yet the state has maintained its position on their prohibition since it was founded in 1864.<sup>99</sup>

### III. HISTORY OF LOTTERIES

With a full understanding of how lotteries work and how impactful their revenue can be for important public purposes, it is clear why so many states have legalized them.<sup>100</sup> To better understand why there are still six states that do not allow lotteries, it is helpful to review the history of lotteries and why they were banned in the first place.<sup>101</sup>

#### A. *History of Lotteries in the United States*

Lotteries have been a part of American history since 1612, when a lottery was implemented by King James I to provide funding to Jamestown, the first English colony in America.<sup>102</sup> Since then, perspectives have varied on whether or not lotteries should be morally allowed as a matter of public policy.<sup>103</sup> For instance, from 1790 to 1860, lotteries were generally viewed favorably with twenty-four out of thirty-three states using them to fund public services, including education, orphanages, and courthouses.<sup>104</sup> Local governments used lotteries during this period because effective local taxation was not in place and lotteries provided a source of funding that was not otherwise available.<sup>105</sup>

Attitudes began to change as lotteries became privatized, resulting in fraud and corruption with players being cheated out of prizes.<sup>106</sup> Additionally, the public began to see lotteries as a regressive tax on the poor and uneducated.<sup>107</sup> As a result, states began banning lotteries.<sup>108</sup> By 1878, lotteries were illegal in

---

<sup>97</sup> North American Association of State and Provincial Lotteries, *North American Lotteries Support the United States Economy*, <http://www.naspl.org/nasplmembers/> (last visited Mar. 3, 2018).

<sup>98</sup> *Id.*

<sup>99</sup> See NEV. CONST. art. IV, § 24; see *infra* Part III (B) and (C).

<sup>100</sup> See *supra* Part II.

<sup>101</sup> ABC NEWS, *supra* note 2.

<sup>102</sup> Alicia Hansen, *State-Run Lotteries as a Form of Taxation*, TAX FOUND. (Oct. 8, 2005), <http://taxfoundation.org/article/state-run-lotteries-form-taxation>.

<sup>103</sup> See *id.*

<sup>104</sup> See *id.*

<sup>105</sup> See *id.*

<sup>106</sup> See e.g. Diana Williams, *Lottery Fever*, BACK STORY, <http://backstoryradio.org/blog/lottery-fever-a-brief-history-of-american-lotteries> (last visited Aug. 23, 2017).

<sup>107</sup> See Hansen, *supra* note 102.

<sup>108</sup> Roger Dunstan, *Gambling in California*, 97-003 CAL. RES. BUREAU, CAL. ST. LIBR. ch. II, 4 (Jan. 1997), <https://www.library.ca.gov/CRB/97/03/97003a.pdf>.

every state except for Louisiana.<sup>109</sup>

The Louisiana Lottery Company (“the Company”) held the last legal lottery charter in the country at the end of the 19th century, and was the epitome of the corruption that led to all other states banning lotteries during that era.<sup>110</sup> The Company received its lottery charter by bribing the Louisiana legislature, and was known to employ unethical operational practices such as placing unsold lottery tickets in its drawing, allowing the Company to win its own prizes.<sup>111</sup> After the anti-lottery act of 1890 prohibited the Company from advertising and conducting its lottery within the United States, it moved operations to Honduras.<sup>112</sup> Then, in 1895, Congress prohibited the transportation of lottery-related materials in interstate and foreign commerce, which ultimately led to the final demise of the Louisiana Lottery Company.<sup>113</sup>

By the end of the 19th century, lotteries were not permitted in any state, and thirty-five states went as far as banning them in their constitution.<sup>114</sup> Lotteries remained banned in all states for seventy years until March 12, 1964, when New Hampshire established a lottery to raise money for education.<sup>115</sup> Gradually, the rest of the country followed suit and as of 2018, lotteries are legal in the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and all but six states.<sup>116</sup>

In 2015, lottery sales in the United States totaled \$73.8 billion.<sup>117</sup> Over \$400 billion was raised for public programs in the United States since the New Hampshire lottery was founded in 1964.<sup>118</sup> Lottery proceeds are used in different ways depending on the jurisdiction.<sup>119</sup> Some states allocate lottery proceeds to the state’s general fund while others dedicate fixed portions of the proceeds to special programs that benefit education, health care, the environment, and other public purposes.<sup>120</sup>

---

<sup>109</sup> *Id.* at ch. II, 7.

<sup>110</sup> *See id.*; *see also* 1888: *The Louisiana Lottery Was a Controversial Private Venture*, THE TIMES-PICAYUNE (Sept. 22, 2011 11:59 PM), [http://www.nola.com/175years/index.ssf/2011/09/1888\\_the\\_louisiana\\_lottery\\_was.html](http://www.nola.com/175years/index.ssf/2011/09/1888_the_louisiana_lottery_was.html).

<sup>111</sup> *See* 1888: *The Louisiana Lottery*, *supra* note 110.

<sup>112</sup> John Crigler, John W. King & Amelia L. Brown, *Why Sparky Can’t Bark - A Study of the Ban on Broadcast Advertisements for Lotteries*, 2 COMM.LAW CONSP. 43, 48-49 (1994).

<sup>113</sup> *See id.*; *see also* Dunstan, *supra* note 108, at ch. II, 7 (stating that the Louisiana Lottery was abolished in 1895).

<sup>114</sup> Dunstan, *supra* note 108, at ch. II, 7.

<sup>115</sup> *See* N.H. LOTTERY, *Did You Know That the New Hampshire Lottery is the Oldest Legal Lottery in the United States?*, <https://www.nhlottery.com/About-Us/History.aspx> (last visited Mar. 6, 2018).

<sup>116</sup> *See id.*

<sup>117</sup> NASPL FAQs, *supra* note 42.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

Recent history reveals that state legislators have gradually implemented lotteries across the United States.<sup>121</sup> With only six states not offering lotteries, the question becomes: who will implement one next?<sup>122</sup> The answer will likely rely on the history of lotteries in each of those states, and if present-day circumstances outweigh the historical reasoning for not allowing a lottery.<sup>123</sup>

*B. History of Lotteries in Nevada*

Nevada was not an outlier when it prohibited lotteries in its constitution in 1864.<sup>124</sup> As previously discussed, by 1878 lotteries were made illegal in every state in the country, except Louisiana, due to ongoing corruption and the moral sensitivities associated with them.<sup>125</sup> Therefore, it is not surprising that the framers found it appropriate to prohibit lotteries in Nevada.<sup>126</sup> When the Nevada Constitution was ratified, Article 4 Section 24 provided that “[n]o lottery shall be authorized by this state, nor shall the sale of lottery tickets be allowed.”<sup>127</sup> This section was taken directly from the California constitution and adopted in Nevada without debate.<sup>128</sup>

While Nevada was similar to other states in its view on lotteries, as time passed it became clear that the state was very different in its view on other types of gambling.<sup>129</sup> Shortly after becoming a state, the first Nevada legislature attempted to legalize gambling so that it could be regulated.<sup>130</sup> When the initiative failed, the state reduced penalties for gambling to mild punishments for operators and no punishment for players.<sup>131</sup> Gambling laws remained relaxed in Nevada until 1909 when the state criminalized all forms of gambling.<sup>132</sup> Even with formal legislation in place, enforcement of gaming laws again began to relax.<sup>133</sup> Finally, in 1931, Assembly Bill 98 made widespread gambling officially legal in Nevada, giving birth to what is now the largest gaming market in the United States.<sup>134</sup>

---

<sup>121</sup> See N.H. LOTTERY, *supra* note 115.

<sup>122</sup> See ABC NEWS, *supra* note 2.

<sup>123</sup> See generally Dunstan, *supra* note 108, at ch. II, 7.

<sup>124</sup> See *supra* Part III (A); see also NEV. CONST. art. IV, § 24.

<sup>125</sup> See Dunstan, *supra* note 108, at ch. II, 7.

<sup>126</sup> NEV. CONST. art. IV, § 24.

<sup>127</sup> *Id.*

<sup>128</sup> The California constitution has since amended the applicable section of its constitution; however, the 1849 version included the exact language adopted in the Nevada constitution. See *State v. Overton*, 16 Nev. 136, 138 (1881); see also CAL. CONST. 1849 art. IV, § 27.

<sup>129</sup> See NEV. RESORT ASS’N, *supra* note 4.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*; Ferris, *supra* note 2.

Although anti-gambling laws were generally subjected to mild enforcement, Nevada began strictly enforcing its constitutional prohibition of a lottery as early as the 1870s.<sup>135</sup> On March 3, 1871, the Nevada Legislature approved an act that allowed the Nevada Benevolent Association to have up to three “gift concerts,” where the tickets sold would entitle the holder to a chance to win an award “by raffle or other scheme of like character.”<sup>136</sup> The Nevada Supreme Court held that the scheme conducted by the Nevada Benevolent Association was a lottery, rendering the legislative act that allowed it unconstitutional.<sup>137</sup> The court went on to state that an English statute in force at the time of American Independence, which declared all lotteries to be a public nuisance, was a part of common law of the United States and applied in the framers’ decision to constitutionally prohibit the legislature from authorizing a lottery.<sup>138</sup>

Seven years later, the Supreme Court of Nevada addressed the constitutional prohibition of a lottery again in *State v. Overton*.<sup>139</sup> Once again the Nevada Supreme Court had to determine if a scheme conducted by the Nevada Benevolent Association was a lottery prohibited under the state constitution.<sup>140</sup> In that case, the Nevada Benevolent Association was conducting a similar gift concert scheme under the authority of a new legislative act established to aid them in “providing means for the care and maintenance of the insane of Nevada, and for other charitable purposes.”<sup>141</sup> The act declared:

[I]t shall be lawful for the Nevada Benevolent Association of the state of Nevada to give not exceeding five public entertainments or concerts, to sell tickets for admission to the same; to distribute among the holders of such tickets personal property, real estate, things in action, demands or other valuables, and to regulate the distribution of all such property or gifts by raffle or other schemes of like character.<sup>142</sup>

The court stated that “[e]very scheme for the distribution of prizes by chance is a lottery” and that the scheme conducted by the Nevada Benevolent Association was a lottery.<sup>143</sup> The court went on to say that the Nevada Constitution clearly states that “it was not intended that *any* lottery should be

---

<sup>135</sup> *Ex parte Blanchard*, 9 Nev. 101, 104 (1874).

<sup>136</sup> *Id.* at 104.

<sup>137</sup> *Id.* at 105.

<sup>138</sup> *Id.* at 105.

<sup>139</sup> *Overton*, 16 Nev. at 136.

<sup>140</sup> *Id.* at 141.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at 142, 145.

authorized by this state for *any* purpose.”<sup>144</sup> This includes both public and private lotteries regardless of the purpose in which the lottery was established.<sup>145</sup> Ultimately, the court concluded that the constitution did not allow the legislature to authorize *any* lottery, and that the legislative act was null and void because it violated Article 4 Section 24 of the Nevada Constitution.<sup>146</sup>

The court’s opinion in *Overton* seems strange when compared with Nevada’s approach to other forms of gambling at that time.<sup>147</sup> After all, in 1881 the state was loosely enforcing gambling laws.<sup>148</sup> In *Overton*, the court said that the Nevada Benevolent Association was set out to “enrich their own pockets at the expense of the people . . . by holding out promises of the great and sudden gains that might be acquired by ticket holders” and that “golden prizes would be ‘the lure to incite the credulous and unsuspecting into [the] scheme.’”<sup>149</sup> It is hard to say how any other form of gambling is different.<sup>150</sup> The three basic elements of gambling — consideration, chance, and prize,<sup>151</sup> — are not only found in lotteries but also every other form of gambling allowed in Nevada.<sup>152</sup> Nevertheless, the state found it prudent to enforce the prevention of lotteries but not any other type of gambling.<sup>153</sup>

Nevada’s constitutional ban on all forms of lotteries remained in effect until 1990, when the state amended its constitution to allow the Legislature to permit lotteries under certain circumstances.<sup>154</sup> The amendment added subsection 2 to Article 4 Section 24 of the Nevada Constitution, which provides:

The State and the political subdivisions thereof shall not operate a lottery. The Legislature may authorize persons engaged in charitable activities or activities not for profit to operate a lottery in the form of a raffle or drawing on their own behalf. All proceeds of the lottery, less expenses directly related to the operation of the lottery, must be used only to benefit charitable or nonprofit

---

<sup>144</sup> *Id.* at 149. (emphasis added).

<sup>145</sup> *See id.*

<sup>146</sup> *See id.* at 150 (emphasis added).

<sup>147</sup> *See id.*; *see also* NEV. RESORT ASS’N, *supra* note 4.

<sup>148</sup> *See* NEV. RESORT ASS’N, *supra* note 4.

<sup>149</sup> *See Overton*, 16 Nev. at 144-145.

<sup>150</sup> *See Gambling in the Federal Workplace*, NAT’L INST. OF HEALTH (Feb. 19, 2013), <https://ethics.od.nih.gov/topics/gambling.htm>.

<sup>151</sup> *Id.*

<sup>152</sup> *See id.*

<sup>153</sup> *See Blanchard*, 9 Nev. at 101 (1874).

<sup>154</sup> *See* NEV. CONST. art. IV, § 24 (“Amended in 1990. Proposed and passed by the 1987 legislature; agreed to and passed by the 1989 legislature; and approved and ratified by the people at the 1990 general election.”).



activities in this State. A charitable or nonprofit organization shall not employ or otherwise engage any person to organize or operate its lottery for compensation. The Legislature may provide by law for the regulation of such lotteries.<sup>155</sup>

This is the only type of lottery that has ever been legal in Nevada and ironically it is for charitable purposes, which is allegedly what the lotteries that the Nevada Benevolent Association were created to support.<sup>156</sup>

### C. *Why the Nevada Constitution Still Prohibits Lotteries*

The constitutional amendment in 1990 was the only successful legislative effort to alter Nevada's ban on lotteries, yet there have been several other attempts to do so.<sup>157</sup> Since 1975, almost thirty attempts to amend Article 4 Section 24 of the Nevada Constitution have failed to pass the Legislature.<sup>158</sup> Although history shows that lottery bills are persistently disfavored in Nevada, new proposals seem to be introduced perpetually.<sup>159</sup> That raises the question: why are these bills failing and why is Nevada still without a lottery?

The most recent lottery proposal was in 2015, when Assemblyman Harvey Munford introduced Assembly Joint Resolution 6 ("A.J.R. 6") to allow a lottery in "support of the public education of children and the health and welfare of senior citizens."<sup>160</sup> Assemblyman Munford presented A.J.R. 6 to the Assembly Committee on March 19, 2015.<sup>161</sup> Naturally, those in attendance included both individuals in support of a lottery, as well as individuals against a lottery.<sup>162</sup>

Among those in support included Assemblyman Ohrenschall, who addressed the Committee and discussed how the Texas and California lotteries raised \$17 billion and \$28 billion, respectively, for education since their inception.<sup>163</sup> Assemblyman Ohrenschall went on to explain that "the landscape in our nation was different" when the Nevada Constitution was amended in 1990 and the prohibition of state lotteries was maintained.<sup>164</sup> He further

---

<sup>155</sup> *Id.*

<sup>156</sup> See NEV. CONST. art. IV, § 24; *Overton*, 16 Nev. at 141.

<sup>157</sup> See Schwartz, *supra* note 17.

<sup>158</sup> Whaley, *supra* note 3.

<sup>159</sup> See *id.*

<sup>160</sup> Assemb. J. Res. 6, 78th Sess. (Nev. 2015), <https://www.leg.state.nv.us/Session/78th2015/Bills/AJR/AJR6.pdf>.

<sup>161</sup> *Minutes of the Meeting of the Assembly Committee on Legislative Operations and Elections*, 78th Sess. 20-28 (Nev. 2015), <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/LOE/Final/561.pdf> [hereinafter *Minutes*].

<sup>162</sup> *Id.* at 21-22.

<sup>163</sup> *Id.* at 21.

<sup>164</sup> *Id.* See NEV. CONST. art. IV, § 24 ("Amended in 1990. Proposed and passed by the 1987 legislature; agreed to and passed by the 1989 legislature; and approved and ratified by the people at the 1990 general election.").

explained that in 1990, Nevada and Atlantic City were the two major gambling markets in the United States, but today gambling has become much more widespread and states everywhere are successfully operating lotteries in jurisdictions that also have casinos and racetracks.<sup>165</sup> Assemblyman Ohrenshall's ultimate point was that lotteries can successfully coexist in jurisdictions with other forms of gambling.<sup>166</sup>

David Hoff, a retired Clark County school teacher and ordained priest, also addressed the Committee in support of A.J.R. 6.<sup>167</sup> Mr. Hoff provided examples of how Georgia's lottery helped their public education system over the years as an example of how a lottery could help public education in Nevada.<sup>168</sup> Specifically, Mr. Hoff noted how Georgia's lottery generated \$11.4 billion for education in the past sixteen years.<sup>169</sup> Mr. Hoff explained that the money is not only used to provide various forms of programs and supplies, but also to create incentives to attract teachers to Georgia's public school system.<sup>170</sup> In conclusion, Mr. Hoff urged the Committee to take action on A.J.R. 6 in that legislative session since it would take another session for consideration before the decision could be turned over to the voters of Nevada.<sup>171</sup>

Finally, Las Vegas resident, Bonnie McDaniel, addressed the Committee in support of A.J.R. 6 on behalf of herself and twenty-six registered voting members of her family.<sup>172</sup> Ms. McDaniel informed the Committee that she supports a Nevada lottery to help the state education fund.<sup>173</sup> Ms. McDaniel stated that she did not agree with those who argue that a lottery will be a detriment to the poor demographic.<sup>174</sup> She reasoned that gambling is easily accessible in Nevada even without a lottery and that many gamble away their welfare and social security checks in the casino.<sup>175</sup> Ms. McDaniel further reasoned that if the bill was passed, the Legislature could regulate who could sell lottery tickets and where they could be sold, which could provide a safeguard to prevent the targeting of minority and low-income areas of town for lottery ticket sales.<sup>176</sup>

---

<sup>165</sup> *Minutes, supra* note 161, at 21.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.* at 22-23.

<sup>168</sup> *See id.*

<sup>169</sup> *Id.*

<sup>170</sup> *See id.* at 23 ("The money goes to prekindergarten programs, forgivable loans for students who agree to teach in public schools, computer equipment in classrooms, scholarships for teachers seeking advanced degrees, and high school students graduating with a B or greater average.").

<sup>171</sup> *Id.*

<sup>172</sup> *Id.* at 23.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *See id.*

<sup>176</sup> *See id.*

Next, those opposed to A.J.R. 6 had an opportunity to come before the Committee.<sup>177</sup> Treasurer of the Nevada Families Association, Janine Hansen, was among those against A.J.R. 6.<sup>178</sup> Ms. Hansen addressed the Committee in opposition to Assemblyman Munford's bill because of her concerns with lotteries being most popular among the poor demographic, and the ease of access for a young person to obtain a lottery ticket, which she inferred can lead to addictive and problematic gambling behaviors.<sup>179</sup> Finally, on behalf of the Nevada Independent American Party, Mr. John Wagner addressed the Committee in opposition to A.J.R. 6.<sup>180</sup> Mr. Wagner did not believe A.J.R. 6 was a good policy because he believed that a lottery would be competing with Nevada's number one industry — the gaming industry.<sup>181</sup>

Like many other lottery proposals that came before it, A.J.R. 6 did not make it past the Assembly Committee.<sup>182</sup> Most of the arguments presented by both those in support of the lottery bill and those against it were the same arguments that have been made about lotteries throughout U.S. history.<sup>183</sup> Supporters of A.J.R. 6 cited the benefits that additional funding could provide to Nevada's public school system.<sup>184</sup> Opponents of the bill focused on the moral implications of a lottery including the social injustices that lotteries impose on the poor, and the tendencies that lotteries have to promote problematic gambling.<sup>185</sup>

Although the same general arguments for and against lotteries have been presented throughout U.S. history, arguments in favor of a lottery have prevailed in all but six states in the nation.<sup>186</sup> Any moral policy argument against a lottery has less impact in Nevada since widespread gambling is legal throughout the state and can be found everywhere from casinos, to gas stations, to grocery stores.<sup>187</sup> While arguments for a lottery to support public services,

---

<sup>177</sup> *Id.* at 24.

<sup>178</sup> *Id.* at 24-25.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.* at 26.

<sup>181</sup> *Id.*

<sup>182</sup> *AJR6*, NEV. LEGIS., <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?BillName=AJR6> (last visited Mar.12, 2017) ("Pursuant to Joint Standing Rule No. 14.3.1, no further action allowed.").

<sup>183</sup> See generally *Minutes*, *supra* note 161; see also *supra* Part III (A) (discussing that lotteries were abolished in the United States at the end of the 19th century, partially due to the moral sensitivities associated with them; lotteries were reintroduced to the United States when 1964, when New Hampshire established a lottery in 1964 to raise money for education).

<sup>184</sup> *Minutes*, *supra* note 161, at 20-23.

<sup>185</sup> *Id.* at 24-25.

<sup>186</sup> See *supra* Part III (A); ABC NEWS, *supra* note 2.

<sup>187</sup> See Ron Sylvester, *Trade Points for Pork: Revamped Grocery Store Casinos Offer New Games, New Promotions*, VEGASINC (Feb. 13, 2013 2:00 AM), <https://vegasinc.com/business/gaming/2013/feb/13/trade-points-pork-revamped-grocery-store-casinos-o/>; See Liz Benson, *Mom and Pop Roughed Up in Gaming*

such as education, may have triumphed over the traditional moral arguments against lotteries in other states, those same arguments have proven futile in Nevada when faced with opposition from the largest tax contributing industry in the state — the gaming industry.<sup>188</sup> Gaming companies have consistently opposed amending the Nevada Constitution to allow lotteries because they perceive a state operated lottery as direct competition to their core business.<sup>189</sup> Casino representatives have said that “a lottery would put the state of Nevada in the gambling business” and into competition with its largest taxpayer and private employer.<sup>190</sup>

Though opinions on lotteries have varied in the United States throughout history,<sup>191</sup> the general opinion on lotteries in Nevada has remained unchanged since the states inception.<sup>192</sup> Although lotteries were originally banned in Nevada due to the common attitude toward them when the state’s Constitution was ratified, they remained banned due to strong opposition from gaming companies.<sup>193</sup> Gaming companies fueled the modern growth of Nevada and shaped the ever-evolving economy that the state now enjoys.<sup>194</sup> Therefore, in order to pass a lottery bill in Nevada, the gaming organizations — who are largely credited for the state’s growth — must support the initiative.<sup>195</sup>

#### IV. A CONSTITUTIONAL AMENDMENT TO BENEFIT PUBLIC EDUCATION

With an understanding of the historical reasons behind Nevada’s ban on lotteries, the discussion can now focus on how to amend the constitution in order to allow lotteries to support the state’s failing public education system. First, an overview of the methods available for amending the Nevada Constitution will be required. Next, the discussion can focus on how a lottery bill should be positioned to garner the support necessary to be successful. Finally, a proposed amendment to Article 4 Section 24, which considers the collective points of this note, will be presented for consideration.

---

*License Bid*, L.V. SUN (Apr. 12, 2008 2:00 AM), <http://lasvegassun.com/news/2008/apr/12/mom-and-pop-roughed-gaming-license-bid/>.

<sup>188</sup> See Steven Kanigher, *Nevada’s Stormy History with Lottery Proposals*, LASVEGASNOW.COM, <http://www.lasvegasnow.com/news/nevadas-stormy-history-with-lottery-proposals> (last visited Mar. 13, 2017); *How Gaming Benefits Nevada*, NEV. RESORTS ASS’N, <http://www.nevadaresorts.org/benefits/taxes.php> (last visited Nov. 1, 2016).

<sup>189</sup> See generally Kanigher, *supra* note 188.

<sup>190</sup> *Id.*

<sup>191</sup> See *supra* Part III (A).

<sup>192</sup> See *supra* Part III (B).

<sup>193</sup> See Kanigher, *supra* note 188.

<sup>194</sup> See NEV. RESORT ASS’N, *supra* note 4 (“By 1970, tourism had become Nevada’s largest industry. In 1975, gaming revenues topped \$1 billion annually and nearly 50 percent of Nevada’s budget was supported by gaming-based tax revenue.”).

<sup>195</sup> *Id.*; Kanigher, *supra* note 188.

*A. How to Amend the Nevada Constitution*

The Nevada Constitution can be amended in three ways, including: (1) a constitutional convention, (2) an initiated constitutional amendment, or (3) a legislatively referred constitutional amendment.<sup>196</sup> Nevada has only held one constitutional convention, which was in 1864 when the original constitutional was ratified.<sup>197</sup> Under Article 16 Section 2 of the Nevada Constitution, two-thirds of the Nevada Legislature must vote to revise the entire Constitution in order to hold another constitutional convention.<sup>198</sup> If two-thirds of the legislature vote favorably, the question of whether to hold a constitutional convention will go before the citizens of Nevada on the next statewide ballot.<sup>199</sup>

An initiated constitutional amendment is a form of direct democracy that involves amending the state's constitution through an initiative brought by the voters of Nevada.<sup>200</sup> Under Article 19 Section 2 of the Nevada Constitution, a petition for an initiated constitutional amendment must be signed by at least ten percent of the voters who voted in the preceding general election, in no less than seventy-five percent of the counties in the state.<sup>201</sup> If the petition garners the requisite support of voters from the preceding general election, the question will be placed on the ballot in the next general election.<sup>202</sup> If the constitutional amendment is approved by a majority of voters, the same question must be submitted again and approved by a majority of voters in the next general election in order to become a part of the Nevada Constitution.<sup>203</sup> Nevada is the only state that requires an amendment that was initiated by its citizens to pass a statewide vote twice.<sup>204</sup>

A legislatively referred constitutional amendment is proposed by either the Senate or Assembly and must be agreed to by a majority of the members elected in each of the two houses.<sup>205</sup> If approved in the first legislative session, the proposed amendment must also be approved by a majority of the members in each of the two houses in the next legislative session before going to the voters.<sup>206</sup> If a majority of voters approve the amendment it becomes a part of

---

<sup>196</sup> *Nevada Constitution*, BALLOTPEDIA, [https://ballotpedia.org/nevada\\_constitution](https://ballotpedia.org/nevada_constitution) (last visited Mar. 13, 2017).

<sup>197</sup> *State Constitution*, BALLOTPEDIA, [https://ballotpedia.org/state\\_constitution](https://ballotpedia.org/state_constitution) (last visited Mar. 13, 2017).

<sup>198</sup> NEV. CONST. art. XVI, § 2.

<sup>199</sup> *Id.*

<sup>200</sup> *Initiated Constitutional Amendment*, BALLOTPEDIA, [https://ballotpedia.org/Initiated\\_constitutional\\_amendment](https://ballotpedia.org/Initiated_constitutional_amendment) (last visited Mar. 13, 2017).

<sup>201</sup> NEV. CONST. art. XIX, § 2.

<sup>202</sup> *See generally* NEV. REV. STAT. § 293.1279 (2016).

<sup>203</sup> NEV. CONST. art. XIX, § 2.

<sup>204</sup> *Initiated Constitutional Amendment*, *supra* note 200.

<sup>205</sup> NEV. CONST. art. XVI, § 1.

<sup>206</sup> *Id.*

the Nevada Constitution.<sup>207</sup>

A constitutional convention would not be the appropriate method for amending the Nevada Constitution to allow lotteries because a constitutional convention is designed to address sweeping changes that are needed to the constitution.<sup>208</sup> Therefore, either an amendment initiated by the citizens of Nevada or a legislatively referred amendment would be the appropriate way to address amending Article 4 Section 24.<sup>209</sup> Every lottery bill in this century has come as a legislatively referred amendment.<sup>210</sup> This is likely due to the costs associated with collecting the signatures required for a citizen initiated constitutional amendment.<sup>211</sup> For example, in 2016 an initiated constitutional amendment to eliminate monopolies on the Nevada energy market required 55,234 valid signatures to get on the ballot.<sup>212</sup> Over \$400,000 was spent to get the signatures required which broke down to a cost of approximately \$7.34 per required signature.<sup>213</sup>

Since the number of signatures required for an initiated constitutional amendment is a percentage of the voters that voted in the preceding general election, the actual amount of signatures needed will vary every two years.<sup>214</sup> In 2018, 112,543 signatures will be required to get an initiated constitutional amendment on the ballot.<sup>215</sup> This is more than double the amount required in 2016.<sup>216</sup> If the cost per required signature is similar to what was required for the aforementioned energy initiative, approximately \$826,065.62 will be needed to get the signatures required for an initiated constitutional amendment to bring a lottery to Nevada in 2018.<sup>217</sup> It is easy to comprehend why a private energy company would be motivated to sponsor an initiative to eliminate energy monopolies in Nevada, since it would open the market up for financial gain.<sup>218</sup> However, a private citizen or business would not gain anything financially by

---

<sup>207</sup> *Id.*

<sup>208</sup> NEV. CONST. art. XVI, § 2.

<sup>209</sup> *See* NEV. CONST. art. XIX, § 2; NEV. CONST. art. XVI, § 1.

<sup>210</sup> *See* Kanigher, *supra* note 188.

<sup>211</sup> *See Nevada Legislature to Minimize Regulations on the Energy Market and Eliminate Legal Energy Monopolies Amendment (2018)*, BALLOTPEDIA, [https://ballotpedia.org/Nevada\\_Legislature\\_to\\_Minimize\\_Regulations\\_on\\_the\\_Energy\\_Market\\_and\\_Eliminate\\_Legal\\_Energy\\_Monopolies\\_Amendment\\_\(2018\)](https://ballotpedia.org/Nevada_Legislature_to_Minimize_Regulations_on_the_Energy_Market_and_Eliminate_Legal_Energy_Monopolies_Amendment_(2018)) (last visited Mar. 13, 2017) [hereinafter *Energy Amendment*].

<sup>212</sup> *See id.*

<sup>213</sup> *See id.*

<sup>214</sup> *Laws Governing the Initiative Process in Nevada*, BALLOTPEDIA, [https://ballotpedia.org/Laws\\_governing\\_the\\_initiative\\_process\\_in\\_Nevada#tab=Laws\\_and\\_procedures](https://ballotpedia.org/Laws_governing_the_initiative_process_in_Nevada#tab=Laws_and_procedures) (last visited Mar. 13, 2017).

<sup>215</sup> *Id.*

<sup>216</sup> *See id.* (showing that in 2016, 55,234 signatures were required to get an initiated constitutional amendment on the ballot; in 2018, 112,543 are required).

<sup>217</sup> *See id.*; *Energy Amendment*, *supra* note 211 (112,543 required signatures x \$7.34 cost per required signature = \$826,065.62).

<sup>218</sup> *See Energy Amendment*, *supra* note 211.

providing the capital required to gather the requisite signatures for a lottery petition, since lottery profits are generally used to fund public services.<sup>219</sup> Thus, unless private citizens or companies are willing to invest their own time and capital to gather the signatures required for an initiated constitutional amendment, a legislatively referred amendment is the method that is most likely to pave the way forward for amending the Nevada constitution to allow lotteries.<sup>220</sup>

### *B. Positioning a Lottery Bill for Success*

A legislatively referred amendment to change Article 4 Section 24 of the Nevada Constitution must include several factors to be successful.<sup>221</sup> First, it should specify that any lottery operated by the state must be for the sole benefit of Nevada's public education system. This will ensure that the proceeds of the lottery are used to improve Nevada's failing public education system.<sup>222</sup> Assemblyman Munford included this type of language in A.J.R. 6, which specified that lottery proceeds must be used for public education and the welfare of senior citizens.<sup>223</sup> Although A.J.R. 6 did not make it beyond the Assembly Committee, it remains important to specify that lottery proceeds are mandated for the specific policy reasons used to gain the support of Nevada voters, which in this case would be to support public education.<sup>224</sup>

Next, a legislatively referred amendment to bring a lottery to Nevada must address the elephant in the room — the Nevada gaming community's opposition because of the perceived competition a lottery would bring to their business.<sup>225</sup> As discussed in Part III of this note, gaming organizations fueled the growth of Nevada and are the state's largest taxpayers.<sup>226</sup> In order for a lottery bill to have any chance of passing the Nevada Legislature, it must be structured in a way that is fair to gaming organizations.<sup>227</sup>

To address the concerns of Nevada gaming organizations, the amendment must first ensure that an acceptable commission is designated for lottery retailers. Next, casino operators should be allowed to establish their own lotteries in addition to the lottery that is operated by the state, provided that a fixed portion of the proceeds go to Nevada's public education system. Finally, both lottery retailers and private lottery operators should be required to hold a valid non-restricted gaming license.

---

<sup>219</sup> See Brady and Pijanowski, *supra* note 12.

<sup>220</sup> See generally NEV. CONST. art. XVI, § 1.

<sup>221</sup> See generally *supra* Part III (C).

<sup>222</sup> Ryan, *supra* note 13.

<sup>223</sup> Assemb. J. Res. 6, *supra* note 160.

<sup>224</sup> AJR6, *supra* note 182.

<sup>225</sup> See *supra* Part III (C).

<sup>226</sup> See NEV. RESORT ASS'N, *supra* note 4.

<sup>227</sup> See *supra* Part III (C).

### 1. Provide Lottery Retailers with a Fair Commission

Commissions for the sale of lottery tickets should be well above the six percent average that is paid throughout the rest of the country.<sup>228</sup> While commissions cannot be so high that the remaining proceeds do little to benefit Nevada's public school system, they should be rewarding enough for gaming companies to view a lottery as a new source of revenue as opposed to something that will decrement their existing business.<sup>229</sup> As reviewed in Part II of this note, at least fifty percent of lottery revenue is generally retained for player prizes, approximately five percent is budgeted for operating costs, an average of six percent is distributed in retailer commissions, and around thirty-nine percent benefits the elected state program.<sup>230</sup> To ensure gaming companies get a fair share of the profits while maintaining a meaningful contribution to improve the public education system, the Nevada lottery should mandate a fifteen percent retailer commission on all tickets sales. This would contribute thirty percent of lottery revenue to the Nevada public education system, while retaining fifty percent for player prizes and five percent for operational costs.<sup>231</sup>

To illustrate how this distribution would breakdown financially, it is helpful to analyze it against potential lottery revenue figures. In fiscal year 2017, lottery ticket sales in the United States was \$236 per capita.<sup>232</sup> Applying that figure to Nevada's 2017 estimated population of 2,998,039 people suggests that annual lottery tickets sales could exceed \$707 million.<sup>233</sup> Under the distribution arrangement proposed, estimated lottery revenue would be disbursed as provided in Table 2 below:

Table 2

Estimated Distribution of Lottery Proceeds		
Category	Allocation of Revenue	Percent of Total
Player Prizes	\$353,768,602.00	50%
Retailer Commissions	\$106,130,580.60	15%
Cost of Operations	\$35,376,860.20	5%
Public Education	\$212,261,161.20	30%
Total Lottery Revenue	\$707,537,204.00	100%

<sup>228</sup> NACS, *supra* note 92.

<sup>229</sup> See Kanigher, *supra* note 188.

<sup>230</sup> See *supra* Part II.

<sup>231</sup> 50% player prizes + 5% operating costs + 15% retailer commission + 30% contributed to public education = 100%.

<sup>232</sup> *Comprehensive Annual Financial Report For The Fiscal Year Ended June 30, 2017*, ARK. SCHOLARSHIP LOTTERY 52 (2016), <http://myarkansaslottery.com/sites/default/files/pdfs/reports/CAFRFY17.pdf> [hereinafter *Arkansas 2017*].

<sup>233</sup> See *id.*; see also *Population Estimates, July 1, 2017*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/NV#viewtop> (last visited Jan. 22, 2018) (2,998,039 x \$236 = \$705,613,920).



With a fifteen percent commission, Nevada casinos that sell lottery tickets would collectively earn over \$106 million if the Nevada population purchases lottery tickets on a per capita basis at the national average rate.<sup>234</sup> In 2017, the Nevada Gaming Control Board reported total gaming win figures in excess of \$11.5 billion for statewide non-restricted locations.<sup>235</sup> MegaBucks slot machines represented approximately \$53.3 million, Roulette represented approximately \$367.3 million, and Pai Gow Poker represented approximately \$96.5 million of Nevada's statewide gaming revenue in 2017.<sup>236</sup> Thus, lottery commissions in excess of \$106 million would be a significant stream of revenue when compared with other popular games.<sup>237</sup> Since Nevada residents currently have to leave the state to purchase lottery tickets, a fair portion of the revenues generated by a lottery would not have otherwise been earned by casinos.<sup>238</sup>

## 2. Allow Nevada Casinos to Operate Private Lotteries

In addition to fair retailer commissions, the amendment should allow Nevada casinos to operate their own lotteries, provided that a fixed portion of the proceeds go to the Nevada public education system. This will give casino operators the option of organizing their own lotteries to capitalize on a new line of gaming revenue, while maintaining the principal goal of the amendment, which is improving public education. Like retailer commissions, the amount of the private lottery proceeds required to go to public education must be reasonable. The percentage cannot be so low that the no meaningful impact is made to Nevada's public school system. Yet, the percentage cannot be so high that casinos would never consider operating a private lottery because it would have no meaningful impact to gaming revenues.

For these reasons, private lotteries should be authorized in Nevada as long as twenty percent of the revenue generated goes to the public education system. The percentage of revenue reserved for Nevada's public-school system should be lower for privately operated lotteries since the casino will be required to take-on the burden of operational expenses and paying player prizes.<sup>239</sup> Providing gaming organizations with the flexibility to create and operate their own lotteries would allow them to have direct control over the odds offered, which would give the casino the ability to adjust the game as necessary to ensure optimal profitability.<sup>240</sup>

---

<sup>234</sup> *Arkansas 2017*, *supra* note 232.

<sup>235</sup> *Gaming Revenue Report*, NEV. GAMING CONTROL BD. (2017), <http://gaming.nv.gov/modules/showdocument.aspx?documentid=12725>.

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *See supra* Part I (C).

<sup>239</sup> *See supra* Part II.

<sup>240</sup> *Id.*

### 3. *Require a Non-Restricted Nevada Gaming License*

To mitigate the concerns of additional competition entering the gaming industry, lottery retailers and private lottery operators should be required to operate a gaming establishment under a valid non-restricted Nevada gaming license.<sup>241</sup> This would limit the sale of lottery tickets and the operation of private lotteries to casinos that operate more than fifteen slot machines or “any number of slot machines together with any other game, gaming device, race book or sports pool at one establishment.”<sup>242</sup> Restricted gaming license holders — such as gas stations and video-poker bars — would not be permitted to sell lottery tickets or operate a private lottery.<sup>243</sup> This approach is consistent with existing Nevada law, which confines restricted license holders to the operation of “not more than 15 slot machines and no other game or gaming device.”<sup>244</sup> A lottery would be considered another game and therefore should not fall within the scope of a restricted license.<sup>245</sup>

Non-restricted gaming license holders undergo extensive background investigations and are highly regulated by the Nevada Gaming Control Board and the Nevada Gaming Commission.<sup>246</sup> This will ensure that the standards of integrity expected of lottery retailers and operators are consistent with what the state requires of casino operators.<sup>247</sup> Moreover, requiring lottery operators and retailers to operate a gaming establishment under a non-restricted license will ensure that those who participate are devoted to the Nevada gaming community due to the significant personal and financial investment required to obtain a non-restricted gaming license.<sup>248</sup>

Finally, requiring retailers and operators to hold a non-restricted license will also benefit large gaming organizations because of the additional foot traffic that will result from consumers who come to the casino to buy lottery

---

<sup>241</sup> NEV. REV. STAT. § 463.0148 (2016) (“‘Establishment’ means any premises wherein or whereon any gaming is done.”); *Id.* at § 463.0177 (“‘Nonrestricted license’ or ‘nonrestricted operation’ means: (1) A state gaming license for, or an operation consisting of, 16 or more slot machines; (2) A license for, or operation of, any number of slot machines together with any other game, gaming device, race book or sports pool at one establishment; (3) A license for, or the operation of, a slot machine route; (4) A license for, or the operation of, an inter-casino linked system; or (5) A license for, or the operation of, a mobile gaming system.”).

<sup>242</sup> NEV. REV. STAT. § 463.0177 (2016).

<sup>243</sup> *See* Benson, *supra* note 187.

<sup>244</sup> NEV. REV. STAT. § 463.0189 (2016).

<sup>245</sup> *See id.*

<sup>246</sup> *See* Anthony Cabot, *Obtaining a Non-Restricted Gaming License in Nevada*, LEWIS AND ROCA LLP, <https://www.lrrc.com/files/Uploads/Documents/Obtaining%20Nonrestricted%20Gaming%20License.pdf> (last visited Mar. 13, 2017). *See generally* Benson, *supra* note 187.

<sup>247</sup> *See* Cabot, *supra* note 246.

<sup>248</sup> *See id.*

Spring 2018]

A NEVADA LOTTERY

279

tickets.<sup>249</sup> Las Vegas residents are willing to drive forty-minutes to the Primm Valley Lotto Store for a chance to win a large jackpot because they are unable to buy a ticket in the state.<sup>250</sup> The lines at the Primm Valley Lotto Store have grown to over one-thousand people that were willing to wait for up to four hours to purchase a lottery ticket.<sup>251</sup> With a Nevada lottery, residents would no longer have to commit hours from their day to driving and waiting in line in order to buy a lottery ticket.<sup>252</sup> Residents could simply visit a local casino to purchase a ticket, and while there, lottery ticket consumers may decide to eat at a restaurant, play a slot machine, or watch a game at the sports book, all of which would bring additional revenue to the casino.

*C. Proposed Amendment to Article 4 Section 24 of the Nevada Constitution*

As detailed throughout this note, the Nevada constitution has prohibited lotteries since it was ratified in 1864.<sup>253</sup> For various reasons the constitutional prohibition of lotteries remains intact despite ongoing attempts to amend it.<sup>254</sup> For the reasons detailed in this note and the ultimate benefit of Nevada's public education system, Article 4 Section 24 of the Nevada Constitution should be amended to read as follows:

Sec: 24. Lotteries.

1. A lottery may be operated by this State for the purpose of enhancing this State's kindergarten through twelfth grade public education system. The Legislature shall ensure, by law, that the proceeds from the lottery, other than expenses directly related to the operation of the lottery and commissions allocated to authorized lottery retailers, may only be used to supplement and not supplant money that the State would otherwise have expended for kindergarten through twelfth grade public education in this State.
2. Authorized lottery retailers must hold a valid non-restricted gaming license issued by this State. The Legislature shall ensure that authorized lottery retailers are paid a fifteen percent (15%) commission on the sale of a lottery ticket.

---

<sup>249</sup> See Conor Shine, *Hundreds of Dreamers Line Up for Nanoscale Shot at \$640 Million Lottery Jackpot*, L.V. SUN (Mar. 30, 2012, 9:40 AM), <https://lasvegassun.com/news/2012/mar/30/primm-hundreds-line-chance-win-incomprehensible-am/>.

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> NEV. CONST. art. IV, § 24.

<sup>254</sup> See *supra* Part III (C).

3. The political subdivisions of this state shall not operate a lottery.
4. The Legislature may authorize, at its discretion, the operation of a private lottery by parties who operate at least one (1) establishment in this State under a non-restricted gaming license issued by this State, so long as a minimum of twenty percent (20%) of the proceeds from the private lottery are used to benefit this State's kindergarten through twelfth grade public education system.
5. The Legislature may authorize, at its discretion, the operation of a lottery by persons engaged in charitable activities or activities not for profit, in the form of a raffle or drawing on their own behalf, without a non-restricted gaming license issued by this State. All proceeds of the lottery, less expenses directly related to the operation of the lottery, must be used only to benefit charitable or nonprofit activities in this State. A charitable or nonprofit organization shall not employ or otherwise engage any person to organize or operate its lottery for compensation. The Legislature may provide by law for the regulation of such lotteries.

#### CONCLUSION

The Nevada public education system is in trouble.<sup>255</sup> The state ranked last in the country for the past three years and has a nine-year average ranking of 50 out of 51.<sup>256</sup> Funding that could be dedicated to improving public education in Nevada is currently displaced when residents go to neighboring states to purchase lottery tickets.<sup>257</sup> A Nevada lottery could keep this revenue in the state and provide the additional funding needed to improve public education.<sup>258</sup>

Lottery bills have been continuously presented before the Nevada Legislature and it is foreseeable that this will not change until the state constitution is amended and lotteries are made lawful.<sup>259</sup> The amendment proposed in this note will provide a dedicated and much needed source of funding for public education, while respecting the position of the gaming organizations who continue to support the growth of the state's economy.<sup>260</sup>

---

<sup>255</sup> See *supra* Part I.

<sup>256</sup> See *supra* Part I (B).

<sup>257</sup> See *supra* Part I (C).

<sup>258</sup> *Id.*; See *supra* Part I (A).

<sup>259</sup> See *supra* Part III (C); see also *supra* Part IV (A).

<sup>260</sup> See *supra* Part IV (C); see also *supra* Part I, II & III (C).

Spring 2018]

## A NEVADA LOTTERY

281

This amendment offers a fair compromise to the contentions that have prevented previous lottery bills from passing because it eases concerns over competition to the gaming industry by: (1) providing retailer commissions far above the national average, which will generate meaningful revenue for the gaming industry; (2) allowing casinos to establish their own lotteries; and (3) limiting those allowed to sell lottery tickets to non-restricted gaming license holders.<sup>261</sup>

In order for Nevada to continue growing and attracting new businesses and residents, the state must invest in its public education program.<sup>262</sup> A state lottery could provide a dedicated source of funding to make meaningful improvements to public education in Nevada.<sup>263</sup> With the support of the Legislature and the gaming community, this amendment can improve the odds for Nevada's public education system and pave the way to success for Nevada's youth.<sup>264</sup>

---

<sup>261</sup> See *supra* Part IV (B).

<sup>262</sup> See *supra* Part I (A) (discussing that public education was a primary focus of Governor Sandoval in the 2015 legislative session).

<sup>263</sup> See *supra* Part II.

<sup>264</sup> See *supra* Part III (C).