



AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

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Chapter 11: The Contemporary Era – Judicial Power and Constitutional Authority

Guinn v. Legislature of Nevada, 119 Nev. 277 (2003)

In 1993, the legislature of Nevada refused to pass a constitutional amendment that would have changed the procedures by which the state legislature could raise new public revenue through taxes or fees. Since 1864, the state constitution had allowed the legislature to raise taxes by the vote of a simple majority. The new constitutional amendment would have required a two-thirds majority in each legislative chamber to approve a tax hike. After the legislative defeat, proponents of the measure took their proposal directly to the voters through the initiative process, which required two state-wide votes. They succeeded in adding the tax-hike amendment to the state constitution in 1997. The state was operating with a budget surplus at the time of the amendment's adoption, and no tax bills were seriously considered in the legislature until 2003 when the legislature faced a deficit. After a meeting of the general session and two special sessions, the legislature and the governor were not able to agree on a budget package, falling one vote short in the lower chamber of the two-thirds majority to pass the needed tax bill. The governor then took the unprecedented step of petitioning the state supreme court for a writ of mandamus ordering the state legislature to produce a budget, and significantly, to ignore the 1996 tax-hike amendment. The governor pointed to two constitutional provisions that ostensibly required the legislature to act: one requiring that the legislature provide for the support of public schools and a second requiring that legislature provide for a balanced budget.

The judges of the state supreme court unanimously refused to order individual legislators to vote to approve any particular budget or require the governor to alter the scope of the budget negotiations, and in a 6-1 decision ordered the legislature to operate on a simple-majority basis when considering tax measures to resolve the budget impasse. The state legislature and governor soon agreed to a budget package including a tax hike that won a two-thirds majority in both chambers, and the state supreme court issued a revised opinion in the case explaining that its decision only applied to that "crisis" situation and did not negate the two-thirds requirement in the future. The U.S. Supreme Court refused to take a case filed by a group of Nevada taxpayers challenging the state supreme court's decision on grounds that it violated the republican guarantee clause and due process clause of the U.S. Constitution by setting aside a voter approved constitutional amendment. Why are the constitutional questions at issues not covered by the political questions doctrine? Why does the state court believe that the supermajority requirement does not hold in this situation?

CHIEF JUDGE AGOSTI delivered the opinion of the Court.

The Governor of Nevada has petitioned this court for a writ of mandamus declaring the Legislature to be in violation of the Nevada Constitution, and compelling the Legislature to fulfill its constitutional duty to approve a balanced budget. . . . We agree that our intervention is appropriate in this extraordinary circumstance.

The Legislature failed to fund education in the 72nd Regular Session and in two special sessions and is evidently in a deadlock over the means of raising the necessary revenues. As a result, Nevada's public educational institutions are in crisis because they are unable to proceed with the preparations and functions necessary for the 2003-2004 school year.

It is apparent that the Legislature has failed to fulfill its constitutional mandate because of the conflict among several provisions of the Nevada Constitution. Therefore, we, in our judicial role as interpreters of the Nevada Constitution, must reconcile the provisions which cause the present crisis.

Because we conclude that the individual legislators and the Lieutenant Governor have not violated their constitutional duties, we deny the petition as to them as individuals. We grant the petition



as to the Legislature as a body. We order the Legislature to fulfill its obligations under the Constitution of Nevada by raising sufficient revenues to fund education while maintaining a balanced budget. Due to the impasse that has resulted from the procedural and general constitutional requirement of passing revenue measures by a two-thirds majority, we conclude that this procedural requirement must give way to the substantive and specific constitutional mandate to fund public education. Therefore, we grant the petition in part and order the clerk of this court to issue a writ of mandamus directing the Legislature of the State of Nevada to proceed expeditiously with the 20th Special Session under simple majority rule.

....

At the heart of this case is the two-thirds supermajority requirement for revenue-raising legislation. The Legislature is unable to fulfill its constitutional duties to fund the public schools and to adopt a balanced budget because it has not met the two-thirds vote requirement. The Legislature's failure to provide funds for public education, to pass the concomitant revenue generating package and to balance the state's budget after having had the opportunities of one general session and two special sessions to do so, leads us to the inevitable conclusion that it is futile to order the Legislature to debate further within the parameters of Article 4, Section 18(2) [requiring two-thirds majorities to raise taxes]. As constitutional construction is purely a province of the judiciary,¹ we undertake to resolve the tension between the Legislature's constitutional obligation to fund public education and the constitutional provisions requiring a simple majority to enact appropriations bills but a two-thirds majority to generate or increase public revenue to fund those appropriations.

Clearly, this court has no authority to levy taxes or make appropriations. Only our Legislature has been given the constitutional mandate to make appropriations, levy taxes, and to balance the state's budget. However, when constitutional provisions are incompatible with one another or are unworkable, or when the enforcement of one prevents the fulfillment of another, this court must exercise its judicial function of interpreting the Constitution and attempt to resolve the problem.

When construing constitutional provisions, we apply the same rules of construction used to interpret statutes. Our task is to ascertain the intent of those who enacted the provisions at issue, and "to adopt an interpretation that best captures their objective. We must give words their plain meaning unless doing so would violate the spirit of the provision."² Whenever possible, we construe provisions so that they are in harmony with each other. Specific provisions take precedence over general provisions. Finally, constitutional provisions should be interpreted so as to avoid absurd consequences and not produce public mischief.³

Nevada's Constitution clearly expresses the vital role that education plays in our state in Article 11. Of particular importance are Sections 1, 2, and 6. Section 1 mandates:

The legislature shall encourage by all suitable means the promotion of intellectual, literary, scientific, mining, mechanical, agricultural, and moral improvements, and also provide for a superintendent of public instruction and by law prescribe the manner of appointment, term of office and the duties thereof.

Section 2 mandates:

The legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year . . . and the legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

And Section 6 requires the Legislature to provide for the support and maintenance of the public schools.

Our Constitution's framers strongly believed that each child should have the opportunity to receive a basic education. Their views resulted in a Constitution that places great

¹ Marbury v. Madison (1803); State of Nevada v. Rosenthal, 93 Nev. 36, 41 (1977).

² Nevada Mining Association v. Erdoes, 117 Nev. 531, 538 (2001).

³ State v. Brodigan, 44 Nev. 306, 311 (1921).



importance on education. Its provisions demonstrate that education is a basic constitutional right in Nevada.

When a procedural requirement that is general in nature prevents funding for a basic, substantive right, the procedure must yield. Here, the application of the general procedural requirement for a two-thirds majority has prevented the Legislature as a body from performing its obligation to give life to the specific substantive educational rights enunciated in our Constitution. We agree with the Wyoming Supreme Court that “constitutional provisions imposing an affirmative mandatory duty upon the legislature are judicially enforceable in protecting individual rights, such as educational rights.”⁴ It is paramount that we give Section 18(2) a construction that will preserve the basic right of education. Other states with constitutional provisions similar to ours have also given significant import to the educational clauses of their constitutions.⁵

Our Legislature has failed to accomplish its constitutionally mandated tasks of funding Nevada’s public education system and balancing the budget. In order to allow the Legislature to fulfill its constitutional mandate in this regard, the general language of Section 18(2) must give way to the simple majority requirement of Article 4, Section 18(1) in order that the specific provisions concerning education are not defeated.

Based upon the Legislature’s failure over the last several weeks to fund the constitutionally mandated arena of education, we observe that its adherence to the Constitution’s two-thirds majority provision defeats the Constitution’s public education funding requirements. We conclude that an irreconcilable conflict exists with respect to the relevant constitutional provisions. Because the Governor has seen fit to petition this court in mandamus, and because evidently further legislative discussions are futile, it becomes the responsibility of this court to order the Legislature to fund public education and to balance the budget. . . .

....
The Legislature must resume its work of funding education and selecting appropriate methods of revenue generation to balance the state’s budget. Therefore, we grant the petition as to the Legislature of the State of Nevada and direct this court’s clerk to issue a writ of mandamus directing the Legislature to proceed expeditiously with the 20th Special Session under simple majority rule. The relief prayed for in the petition as to the Lieutenant Governor and the individual legislators and in the counter-petition is denied.

JUDGE MAUPIN, dissenting in part and concurring in part.

....
Simply stated, the Governor seeks a judicial declaration that the Legislature has violated the Constitution and an order that the Legislature comply with it. This, in my view, will not provide a solution, other than to chastise the Legislature for its inability to deal with the voting impasse in which it is now embroiled. The Legislature concedes its constitutional obligation to fund public education. Why the relief actually sought in the petition will not effect a concrete solution is explained immediately below.

As a threshold matter, the separation of powers doctrine stands as an impediment to our immediate involvement. Subject only to the reservation of the legislative power to the people in Article 19, our Constitution bestows all legislative authority upon the Legislature. It seems well settled that “a court will not issue the writ of mandamus to compel a state legislature or an officer of such legislature to exercise their legislative functions or to perform duties involving the exercise of discretion.” . . .

Certainly, the specifics of creating a budget fall within the discretion of the Legislature.

We are asked in the Governor’s petition, at least implicitly, to intervene in the current legislative controversy to force individual members of the Legislature to vote (exercise their discretion) in a certain

⁴ Campbell County School District v. State, 907 P.2d 1238, 1264 (Wyo. 1995). . . .

⁵ See, e.g., Brigham v. State, 166 Vt. 246 (Vt. 1997); Lake View School District No. 25 v. Huckabee, 351 Ark. 31 (Ark. 2002).



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way. Because the people of this state elected the individual members of the Legislature and their primacy to vote as they so choose, we cannot grant this relief. The pre-eminent right of individual lawmakers is to vote their consciences on individual measures. Their individual votes do not violate the Constitution, their votes as a body may do so.

For similar reasons, we either cannot or should not, as suggested by some of the legislators, order the Governor to amend the parameters of the special session to open previously closed budget accounts.

..

....

Absent the immediate relief now being afforded, the Governor, of course, would have been free to amend the scope of the special session to facilitate a resolution. Also, individual legislators could, upon further deliberation, have relented to help comply with the supermajority requirements. And, as stated, there was still a window of opportunity for the two branches of government to resolve the impasse without our assistance. In the absence of an education budget crafted and funded in time to effect statutory distribution of funds to the county school districts, we could appropriately declare the impasse at an end because time then would truly be of the essence. Accordingly, I would give the Legislature until July 28, 2003, to resolve the impasse before intervening and considering the relief afforded today, along with other possibilities.

Note: Eleven days after the court issued its ruling, the legislature resolved the stalemate and passed, by a two-thirds majority, a budget package that included a tax measure. Hours before this deal was reached, however, a minority group of legislators petitioned the court for a rehearing of the case. Nearly two months later, the court dismissed the request petition on the grounds that the case was moot once the legislature had successfully passed a budget. Nonetheless, the court took the opportunity to issue a per curiam opinion in *Guinn v. Legislature of Nevada*, 119 Nev. 460 (2003) further justifying its earlier intervention, arguing:

"The essential issue was whether the supermajority requirement could be improperly used by a few to challenge the majority's budget decisions, thereby preventing the Legislature from performing its other constitutional duties. The primary interest supported by permitting the Legislature to suspend the supermajority requirement in this case was nothing less than the constitutional mandate to fund public education

In addition, we were necessarily concerned with the interest of preserving the democratic process. A majority of legislators, representing a majority of the citizens of this state, make decisions on the services to be provided and the future of the state. . . . Where these matters have been discussed and duly voted upon, the Constitution requires that the decision of the majority be respected.

Against public education, the democratic process and fiscal interests, we balanced the interests fostered by the supermajority requirement. The two-thirds requirement was intended, according to the voters in the 1994 and 1996 elections, to limit the influence of special interest groups, ensuring that one group would not control changes in the tax structure. . . . These interests are legitimate and important, but they do not outweigh the need to fund education or abide by the majority rule"

This in turn led to a sharply worded dissent from Judge Maupin:

"I must strongly take issue with the court's comments on rehearing that the supermajority initiative was flawed from its inception and that the Nevada electorate twice approved it without an understanding that a stalemate between appropriations and taxes could eventuate. The initiative was vetted through two elections and we



should not from this vantage point presume to say what the voters of this state knew or did not know. In any case, the potential for such a conflict was inherent in the proposal and the people of this state had every right to make it more onerous for the Legislature to create new revenue streams for the operation of government. Nothing in this constitutional construct prevents the Legislature from crafting a balanced budget and, as noted, the Legislature ultimately complied with the super-majority requirement.

We need look no further than the second paragraph of the Declaration of American Independence for sustenance in any judicial analysis of initiative petitions passed by a vote of the people:

We hold these truths to be self-evident, . . . [t]hat . . . governments are instituted . . . , deriving their just powers from the consent of the governed

This court did not invalidate the tax initiative as somehow being unconstitutional. Having thus affirmed its basic validity, we must recognize that such initiatives, however inconvenient to the operatives of government they may be at times, represent the ultimate form of citizen consent to government. Accordingly, it is not for us, the supreme court of this state, to criticize the wisdom of a valid initiative embraced by an overwhelming majority of Nevadans."