

AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 11: The Contemporary Era – Taxing and Spending Power

Maready v. City of Winston-Salem, 342 NC 708 (NC 1996)

The North Carolina state legislature authorized local governments to make economic development grants to private corporations as a way of enticing them to relocate or stay in that locality. William Maready was a resident of and taxpayer in the city of Winston-Salem. He sued the city in state court to block the grant program, arguing that the statute violated the public purpose clause of the state constitution. By the time of the suit, the city had launched 24 projects and committed to over \$13 million in grants, drawn from taxes collected in the city. The city projected that the grants would result in 5,500 new jobs in the region and eventually expand the tax base enough to cover the cost of the grants. The trial court struck down the statute, and the case was appealed to the state supreme court. The supreme court reversed the trial court and upheld the statute in a 5–2 decision.

Why would the public purpose requirement be applied to appropriations, given that the constitutional provision specifically refers to taxation? What standard does the court specify for evaluating whether a government has violated that constraint? Is the standard meaningful? What evidence does the court require that the government action is serving public purposes? What actions would not qualify as a public purpose? Is the dissent correct that the state could use public funds to pay country club memberships for spouses of corporate executives under this doctrine? How broadly should the court treat the implications of past constitutional amendments modifying the public purpose doctrine?

WHICHARD, JUSTICE.

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Article V, Section 2(1) of the North Carolina Constitution provides that “the power of taxation shall be exercised in a just and equitable manner, for public purposes only.” . . .

In determining whether legislation serves a public purpose, the presumption favors constitutionality. . . . The Constitution restricts powers, and powers not surrendered inhere in the people to be exercised through their representatives in the General Assembly; therefore, so long as an act is not forbidden, its wisdom and expediency are for legislative, not judicial, decision. . . .

In exercising the State's police power, the General Assembly may legislate for the protection of the general health, safety, and welfare of the people. . . . It may “experiment with new modes of dealing with old evils, except as prevented by the Constitution.” . . . The initial responsibility for determining what constitutes a public purpose rests with the legislature, and its determinations are entitled to great weight. . . .

The enactment of [this statute] leaves no doubt that the General Assembly considers expenditures of public funds for the promotion of local economic development to serve a public purpose. . . . The General Assembly has further demonstrated its commitment to economic development by enacting several other statutes that permit local governments to appropriate and spend public funds for such purposes. . . .

While legislative declarations such as these are accorded great weight, ultimate responsibility for the public purpose determination rests with this Court. . . . If an enactment is for a private purpose and therefore inconsistent with the fundamental law, it cannot be saved by legislative declarations to the

contrary. It is the duty of this Court to ascertain and declare the intent of the framers of the Constitution and to reject any act in conflict therewith. . . .

This Court has addressed what constitutes a public purpose on numerous occasions. It has not specifically defined "public purpose," however; rather, it has expressly declined to "confine public purpose by judicial definition[, leaving] 'each case to be determined by its own peculiar circumstances as from time to time it arises.'" . . .

Plaintiff also argues, and the trial court apparently agreed, that this question falls squarely within the purview of *Mitchell v. North Carolina Industrial Development Financing Authority* (NC 1968). There we held unconstitutional the Industrial Facilities Financing Act, a statute that authorized issuance of industrial revenue bonds to finance the construction and equipping of facilities for private corporations. . . . We find *Mitchell* distinguishable.

One of the bases for the *Mitchell* decision was that the General Assembly had unenthusiastically passed the enacting legislation, declaring it to be bad policy. . . . The Assembly's obvious apprehension over using public funds to benefit private entities in this manner [through issuing bonds to subsidize industrial relocation] clearly served to undermine the Court's confidence in the constitutionality of the legislation. The converse is true here in that the Assembly has unequivocally embraced expenditures of public funds for the promotion of local economic development as advancing a public purpose.

Further, and more importantly, the holding in *Mitchell* clearly indicates that the Court considered private industry to be the primary benefactor of the legislation and considered any benefit to the public purely incidental. Notwithstanding its recognition that any lawful business in a community promotes the public good, the Court held that the "Authority's primary function, to acquire sites and to construct and equip facilities for private industry, is not for a public use or purpose." . . . The Court rightly concluded that direct state aid to a private enterprise, with only limited benefit accruing to the public, contravenes fundamental constitutional precepts. . . . Thus, the Court implicitly rejected the act because its primary object was private gain and its nature and purpose did not tend to yield public benefit.

Significantly, the direct holdings of [this case] -- that industrial revenue bond financing is unconstitutional -- were overturned by a specific constitutional amendment. In 1973 the North Carolina Constitution was amended to add Article V, Section 9, which allows counties to create authorities to issue revenue bonds for industrial and pollution control facilities. While this amendment was narrowly tailored to address a specific situation, it nonetheless diminishes the significance of *Mitchell* . . . in the context presented here.

Moreover, the Court's focal concern in *Mitchell* . . . , the means used to achieve economic growth, has also been removed by constitutional amendment. In 1973 Article V, Section 2(7) was added to the North Carolina Constitution, specifically allowing direct appropriation to private entities for public purposes. . . . Hence, the constitutional problem under the public purpose doctrine that the Court perceived in *Mitchell* . . . no longer exists.

. . . . The General Assembly may provide for, *inter alia*, roads, schools, housing, health care, transportation, and occupational training. It would be anomalous to now hold that a government which expends large sums to alleviate the problems of its citizens through multiple humanitarian and social programs is proscribed from promoting the provision of jobs for the unemployed, an increase in the tax base, and the prevention of economic stagnation.

. . . . [T]wo guiding principles have been established for determining that a particular undertaking by a municipality is for a public purpose: (1) it involves a reasonable connection with the convenience and necessity of the particular municipality; and (2) the activity benefits the public generally, as opposed to special interests or persons. . . .

As to the first prong, whether an activity is within the appropriate scope of governmental involvement and is reasonably related to communal needs may be evaluated by determining how similar the activity is to others which this Court has held to be within the permissible realm of governmental action. . . .

Economic development has long been recognized as a proper governmental function. . . . Even subsequent to *Mitchell*, this Court declared that stimulation of the economy involves a public purpose. . . .

Further, the activities [of this statute] authorize invoke traditional governmental powers and authorities in the service of economic development. For example, [sections of the law] authorize economic development expenditures in connection with local government operation of water, sewer, and other utility systems, matters long considered a proper role of government. . . . Urban redevelopment commissions have power to acquire property, clear slums, and sell the property to private developers. In that instance, as here, a private party ultimately acquires the property and conducts activities which, while providing incidental private benefit, serve a primary public goal.

As to the second prong . . . , under the expanded understanding of public purpose, even the most innovative activities [the statute] permits are constitutional so long as they primarily benefit the public and not a private party. "It is not necessary, in order that a use may be regarded as public, that it should be for the use and benefit of every citizen in the community." . . . Moreover, an expenditure does not lose its public purpose merely because it involves a private actor. Generally, if an act will promote the welfare of a state or a local government and its citizens, it is for a public purpose.

Viewed in this light, [the statute] clearly serves a public purpose. Its self-proclaimed end is to "increase the population, taxable property, agricultural industries and business prospects of any city or county." . . . However, it is the natural consequences flowing therefrom that ensure a net public benefit. . . .

The public advantages are not indirect, remote, or incidental; rather, they are directly aimed at furthering the general economic welfare of the people of the communities affected. While private actors will necessarily benefit from the expenditures authorized, such benefit is merely incidental. It results from the local government's efforts to better serve the interests of its people. . . .

In the economic climate thus depicted, the pressure to induce responsible corporate citizens to relocate to or expand in North Carolina is not internal only, but results from the actions of other states as well. To date, courts in forty-six states have upheld the constitutionality of governmental expenditures and related assistance for economic development incentives. . . . Considered in this light, it would be unrealistic to assume that the State will not suffer economically in the future if the incentive programs . . . are discontinued. . . .

North Carolina is no longer a predominantly agricultural community. We are developing from an agrarian economy to an agrarian and industrial economy. North Carolina is having to compete with the complex industrial, technical, and scientific communities that are more and more representative of a nation-wide trend. All men know that in our efforts to attract new industry we are competing with inducements to industry offered through legislative enactments in other jurisdictions It is manifest that the establishment of new industry in North Carolina will enrich a whole class of citizens who work for it, will increase the per capita income of our citizens, will mean more money for the public treasury, more money for our schools and for payment of our school teachers, more money for the operation of our hospitals . . . , and for other necessary expenses of government. This to my mind is clearly the business of government in the jet age in which we are living. . . .

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The decision of the trial court on this issue is *reversed*.

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JUSTICE ORR, joined by JUSTICE LAKE, dissenting.

At issue in this case is the City of Winston-Salem and Forsyth County's authorization . . . to expend public funds directly to, and for the benefit of, selected private businesses as an inducement to these businesses to either expand or locate in the community. The majority opinion sanctions this practice on the theory that since jobs were created and the tax base increased by virtue of the inducements. . . . As a result, it appears to me that little remains of the public purpose constitutional restraint on governmental power to spend tax revenues collected from the public. . . .

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The fallacy of [the majority's] reasoning begins with the assumption that new jobs and a higher tax base automatically result in significant benefit to the public. The trial court's finding of fact . . . addresses the factual and evidentiary failings of this assumption. . . . No evidence was presented that incentives paid or committed by the City and County improved the unemployment rate or that they otherwise resulted in meaningful economic enhancement. No evidence was presented that the incentive grants made by the City and County reduced the net cost of government or resulted in a reduction in the amount or rate of property taxes paid by, or the level of services rendered to, the citizens of Winston-Salem and/or Forsyth County.

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It is clear, however, that for a use to be public its benefits must be in common and not for particular persons, interests, or estates; the ultimate net gain or advantage must be the public's as contradistinguished from that of an individual or private entity. . . .

In examining the stated purposes of the grants, it is obvious that the \$13.2 million was authorized for the specific benefit of the companies in question. The money expended was directly for the use of these private companies to pay for such activities as on-the-job training for employees, road construction, site improvements, financing of land purchases, upfitting of the facilities, and even spousal relocation assistance. In weighing these direct "private benefits" paid for by the taxpayers against the limited "public benefits," only one conclusion can be reached -- that the trial court correctly held that the expenditures in question were not for a public purpose. The opposite conclusion reached by the majority can be reached only by ignoring the weight of the private benefits and relying instead on the assumption that simply creating new jobs and increasing the tax base is a public purpose that justifies the payment of tax dollars to the private sector. As previously noted, there is simply no evidence to support such a conclusion, and the majority's position must fail.

The second aspect of the majority's opinion with which I disagree is its assertion that *Mitchell* [does] not control this decision and [is] distinguishable. . . . The necessity of forcing communities and states to bid against each other with promises of government subsidies in an effort to induce industries to expand or locate in the community is a practice just as distasteful as the practice objected to in *Mitchell*. . . .

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For whatever diminishment there may be, nothing appears to indicate nor does the majority contend that *Mitchell* [was] not correctly decided as a matter of law, nor does the majority contend that the principles of law dealing with the public purpose doctrine are no longer valid.

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The majority also relies on a "changing times" theory to ignore the law as set forth in *Mitchell*. . . . While economic times have changed and will continue to change, the philosophy that constitutional interpretation and application are subject to the whims of "everybody's doing it" cannot be sustained.

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.... These decisions, and the cases on which they are based, establish the following principles:
(1) An activity cannot be for a public purpose unless it is properly the "business of government," and it is not a function of government either to engage in private business itself or to aid particular business ventures. . . .

- (2) Aid to a private concern by the use of public money or by tax-exempt revenue-bond financing is not justified by the incidental advantage to the public which results from the promotion and prosperity of private enterprises.
- (3) In determining what is a public purpose the courts look not only to the end sought to be attained but also "to the means to be used." . . . Direct assistance to a private entity may not be the means used to effect a public purpose. . . . *Stanley v. Department of Conservation & Development* (NC 1973).

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Also troubling is the question of limits under the majority's theory. If it is an acceptable public purpose to spend tax dollars specifically for relocation expenses to benefit the spouses of corporate executives moving to the community in finding new jobs or for parking decks that benefit only the employees of the favored company, then what can a government not do if the end result will entice a company to produce new jobs and raise the tax base? If a potential corporate entity is considering a move to Winston-Salem but will only come if country club memberships are provided for its executives, do we sanction the use of tax revenue to facilitate the move? I would hope not, but under the holding of the majority opinion, I see no grounds for challenging such an expenditure provided that, as a result of such a grant, the company promises to create new jobs, and an increased tax base is projected.

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