

THE FUTURE OF *GUINN V. LEGISLATURE*

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United States Supreme Court Justice Robert Jackson best articulated the human element, giving life to the Nation's Highest Court, when he stated: "We are not final because we are infallible, but we are infallible only because we are final."¹ With the Legislature eventually approving a balanced budget by a supermajority vote, the Nevada Supreme Court's ruling in *Guinn v. Legislature*, will stand, at least for now, because it is "final."² However, the *Guinn* ruling is far from "infallible." The circumstances leading to the Court's decision, as well as the court's logic, have created a dangerous precedent that could extend far beyond Nevada. For example, this potential precedent was alluded to by United States District Court Judge Roger Hunt during the *en banc* hearing following the *Guinn* decision. When Judge Hunt asked defense counsel if the *Guinn* logic would apply beyond the Nevada Senate Bill 6 ("SB 6") budget proposal and allow the Legislature to ignore the supermajority vote in any situation requiring an increase in public revenue to support education, defense counsel responded: "[w]e don't know if the ruling means more [than SB 6], we only know that it does not mean less."³ Unfortunately, the ruling does mean "more." And the future implications, along with the flawed judgment of this holding, necessitate a reconsideration of the Nevada Supreme Court's decision.

I. BACKGROUND

The extraordinary outcome of *Guinn v. Legislature* arose from not-so-extraordinary circumstances. The Nevada Constitution requires the Governor to propose a state budget and submit the proposal to the Legislature.⁴ The Legislature must then approve a balanced budget and appropriate the money needed for all state government expenditures for the next two fiscal years.⁵ Among specific expenditures, the Legislature must support and maintain the public school systems.⁶ The state's estimated expenditures for the biennium must be defrayed with an annual tax.⁷

The dispute in *Guinn v. Legislature* centered on the number of votes needed to pass a budget proposal when the proposal requires an increase in public revenue to support the public education system. Under normal circumstances, a simple majority of each legislative house is required to pass "every

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¹ *Brown v. Allen*, 344 U.S. 443, 540 (1953) (Jackson, J., concurring).

² *Guinn v. Legislature of Nev.*, 71 P.3d 1269 (Nev. 2003).

³ *Angle v. Legislature of Nev.*, 274 F. Supp. 2d 1152 (D. Nev. 2003) (*en banc*).

⁴ NEV. CONST. art. IV, § 2(3).

⁵ *Id.* art. IX, § 2.

⁶ *Id.* art. XI, § 6.

⁷ *Id.* art. IX, § 2.

bill or joint resolution.”⁸ However, in 1996, Nevada voters approved, by an overwhelming majority, a Constitutional amendment requiring a two-thirds, or supermajority, vote of each house to “pass a bill or joint resolution which creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments, and rates.”⁹ Simply put, anytime the Legislature seeks to raise taxes, such a proposal must pass with a two-thirds vote.

In 1997, 1999, and 2001, the Legislature was able to provide funds for education under a simple majority because the State operated under a balance surplus and no major tax increases were required. Citing drastic economic changes, the Governor requested \$980 million dollars in new revenue to balance the proposed budget for the 2003-2005 biennium. The proposed tax increases required the Legislature to approve revenue increases, designed to support the public education system, by a supermajority vote pursuant to Nevada Constitution, Article 4, Section 18(2).

II. GOVERNOR GUINN FILES FOR A WRIT OF MANDAMUS

While the SB 6 budget proposal gained the support of a legislative majority, the Legislature could not pass a budget proposal by a supermajority vote in its general session.¹⁰ Two subsequent special legislative sessions were held in an attempt to reach a compromised budget proposal that would draw a supermajority vote.¹¹ During the second special session, Governor Kenny Guinn took the extraordinary step of suing the Legislature.¹² The Governor petitioned the Nevada Supreme Court for a writ of mandamus, declaring the Legislature in violation of the Nevada Constitution for not complying with their duty to approve a balanced budget and provide appropriations to fund public education.¹³ After reviewing the governor’s petition, the Nevada Supreme Court determined that “the Legislature has failed to fulfill its constitutional mandate because of the conflict among several provisions of the Nevada Constitution.”¹⁴ Specifically, the Court found that the supermajority voting requirement prevented the Legislature from passing a budget proposal, thus providing appropriations to support the public education system.¹⁵ This “budget crisis,” according to the court, was caused by a conflict between the Legislature’s “constitutional obligation to fund education and the constitutional provisions requiring a simple majority vote to enact appropriations bills but a two-thirds majority to generate or increase public revenue to fund those appropriations.”¹⁶

Under Nevada law, when constitutional provisions conflict, the Nevada Supreme Court must interpret the Constitution according to established con-

⁸ *Id.* art. IV, § 18(1).

⁹ *Id.* art. IV, § 18(2).

¹⁰ *Guinn v. Legislature of Nev.*, 71 P.3d 1269, 1273 (Nev. 2003).

¹¹ *Id.* at 1273.

¹² *Id.* at 1272.

¹³ *Id.* at 1272.

¹⁴ *Id.* at 1272.

¹⁵ *Id.*

¹⁶ *Id.* at 1274.

structional canons.¹⁷ Proceeding under constructional canons, which provide that “specific provisions take precedence over general provisions,”¹⁸ the court determined that the supermajority vote was a “general procedural requirement,”¹⁹ while the mandate to support the public education system was a “specific substantive” right.²⁰ The court supported its classification of education as a “specific provision” by referring to sections of the Nevada Constitution that specifically mention the Legislature’s duties to “encourage” education and provide a “uniform system of common schools.”²¹ Therefore, the court determined, if “the procedural two-thirds revenue vote requirement in effect denies the public its expectation of access to public education, then the two-thirds requirement must yield to the specific substantive educational right.”²² The court then directed the Legislature to “proceed expeditiously” with efforts to approve a budget balance “under simple majority rule.”²³ This controversial relief was not requested by any party named in the litigation, specifically, and most importantly, the Governor.

III. RELIEF SOUGHT IN THE UNITED STATES DISTRICT COURT

Pursuant to the court’s ruling, the Nevada State Assembly subsequently “passed” the SB 6 budget proposal by a majority (26 to 16), but by less than a two-thirds vote.²⁴ Prior to the Nevada Senate’s consideration of SB 6, the Assembly members who voted against the proposal, along with individual state voters, filed an application for a temporary restraining order in the United States District Court.²⁵ Plaintiffs also filed a complaint for injunctive and declaratory relief under the Due Process and Equal Protection clauses of the Fourteenth Amendment.²⁶ Plaintiffs argued that the “passage of SB 6 without a ‘supermajority’ vote diluted the votes of the Legislator Plaintiffs, and diluted the representation” the voter Plaintiffs “were entitled” to, “both in violation of the Fourteenth Amendment.”²⁷

To “preserve the status quo,” the United States District Court issued a temporary restraining order, preventing the Defendants from passing SB 6 without a supermajority vote.²⁸ Three days later, the district court conducted an *en banc* hearing regarding Plaintiffs’ Emergency Application for Injunctive Relief.²⁹ Two days after that, the district court dismissed the case for lack of subject matter jurisdiction.³⁰

¹⁷ Nevada Mining Ass’n v. Erdoes, 26 P.3d 753, 757 (Nev. 2001).

¹⁸ Guinn, 71 P.3d at 1275 (citing SIIIS v. Surman, 741 P.2d 1357, 1359 (Nev. 1987)).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 1276 (quoting NEV. CONST. art. III, §§ 1, 2).

²² *Id.*

²³ *Id.*

²⁴ Angle v. Legislature of Nev., 274 F. Supp. 2d 1152, 1153 (D. Nev. 2003).

²⁵ *Id.* at 1153.

²⁶ *Id.* at 1153.

²⁷ *Id.* at 1154.

²⁸ *Id.* at 1154.

²⁹ *Id.* at 1154.

³⁰ *Id.* at 1156.

In *Rooker v. Fidelity Trust Co.*, the Supreme Court held that district courts may not find a judgment of a state supreme court in violation of the federal Constitution.³¹ That power lies solely with the United States Supreme Court.³² *Rooker* was subsequently expanded in *District of Columbia Court of Appeals v. Feldman*, where the Court held that “United States District Courts . . . do not have jurisdiction over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court’s action was unconstitutional.”³³ This doctrine became known as the *Rooker-Feldman* doctrine.

Although the plaintiffs in the district court did not directly challenge the Nevada Supreme Court holding, the *Rooker-Feldman* doctrine has been expanded to prevent “lower federal courts from exercising jurisdiction over any claim that is ‘inextricably intertwined’ with the decision of the state court, even where the party does not directly challenge the merits of the state court’s decision but rather brings an indirect challenge based on constitutional principle.”³⁴ Accordingly, the district court found that the plaintiffs’ requested relief could not be granted “without voiding the decision of the Nevada Supreme Court.”³⁵

The application of the *Rooker-Feldman* doctrine’s bar of subject matter jurisdiction with respect to the individual voter Plaintiffs is less clear because these Plaintiffs were not parties in the *Guinn v. Legislature* case.³⁶ “Generally, a plaintiff in a United States District Court who was not a party to the state court proceeding with which his current federal claims are inextricably intertwined is not within the ambit of the *Rooker-Feldman* doctrine unless that party directly attacks the state court judgment.”³⁷ Thus, the district court could potentially exercise jurisdiction over the case with respect to the voter Plaintiffs. However, the district court found that the claims of the voter Plaintiffs were identical to the legislator Plaintiffs’ claims, and thus “constitute a direct attack on the decision of the Nevada Supreme Court.”³⁸ The court further reasoned that even if jurisdiction were established, the voter Plaintiffs’ claims do not state a cause of action because the defendant Legislators were acting “in compliance with the law as mandated by the highest court of the State of Nevada.”³⁹ In other words, because the Legislature acted constitutionally, according to the Nevada Supreme Court’s interpretation of the Constitution, the United States District Court could not find a constitutional violation without overturning the Nevada Supreme Court’s decision.

³¹ *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 416 (1923).

³² *Id.*

³³ *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 486 (1983).

³⁴ *Angle*, 274 F. Supp at 1155 (quoting *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 n.4 (9th Cir. 2003)).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 1156.

³⁹ *Id.*

IV. THE FLAWED REASONING OF THE *GUINN* COURT

Although the district court did not criticize the Nevada Supreme Court for the controversial *Guinn* decision, the district court reinforced an important doctrine in its *en banc* opinion: separation of powers. The district court correctly elected not to intervene in a situation in which they had no business being involved. Simply put, the district court abstained from interfering with a legislative process, a decision the Nevada Supreme Court should have made.

While the district court could not have granted the Plaintiffs' requested relief, the court had other options at its disposal. The court could have delayed judgment on the injunction, an action that would likely lead the parties to believe the court would be more likely to grant an injunction. Such tactics could have influenced the Legislature to pass a proposal under a supermajority vote in an attempt to avoid the embarrassment of having the federal courts play "babysitter" to the State. The district court also could have dismissed the case as unripe since there was no guarantee the Nevada Senate would pass SB 6, even under a majority vote rule. Dismissing the case as unripe would likely lead some to believe that if a budget proposal were passed without a supermajority vote, the district court would grant relief at that time.

It is true that the aforementioned options would be a blatant use of political tactics by a judicial entity. However, the commission of this exact sin is what brought the case before the district court in the first place. The Nevada Supreme Court's decision to intervene in the legislative process can only be explained, logically, by political motivations to be the savior of the public education system and the slayer of the "budget crisis." Ironically, the Justices' plan to gain political favor backfired as recall petitions began against every Justice who signed the majority opinion. If the elected judges of the Nevada Supreme Court had not been thinking politically, they would not have issued a writ of mandamus because, quite simply, this case was not ripe for judicial intervention.

The *Guinn* court issued its writ of mandamus on July 10, 2003.⁴⁰ The court found the legislature in violation of the Nevada Constitution because the Legislature failed to provide appropriations to support the public education system before July 1, 2003, the beginning of the 2004 fiscal year.⁴¹ However, the Nevada Constitution does not expressly require the Legislature to pass appropriations before the beginning of the fiscal year.⁴² When the Governor convenes a special legislative session, as was the case when *Guinn* was decided, the Nevada Constitution permits legislative action to be taken after the regular legislative session ends.⁴³ Thus, the legislature may constitutionally pass a budget proposal after the regular session ends on July 3, despite the fact that a new fiscal year has begun. As pointed out by the *Guinn* court's lone dissenter, "in the last ten years, the legislature has worked beyond the fiscal year's beginning three times."⁴⁴

⁴⁰ *Id.* at 1153.

⁴¹ *Guinn v. Legislature of Nev.*, 71 P.3d 1269, 1272 (Nev. 2003).

⁴² NEV. CONST. art. IV, § 2(2).

⁴³ *Id.*

⁴⁴ *Guinn*, 71 P.3d at 1277 (Maupin, J., dissenting).

According to Nevada law, the distribution of funds to public schools shall not occur until August 1 of the fiscal year.⁴⁵ When the *Guinn* court issued its ruling on July 10, 2003, the Legislature still had three weeks remaining to fulfill its constitutional mandate to support the public education system. Accordingly, no constitutional violation had occurred; thus, judicial intervention was improper. Fittingly, the Legislature passed a budget proposal under a supermajority vote before the August 1 education-fund distribution date.⁴⁶ The subsequent constitutional passing of a budget proposal, by solely legislative means, is proof that the *Guinn* court, by unnecessarily interfering in the legislative process, violated the separation of powers doctrine as expressed in the Nevada Constitution.⁴⁷ Ironically, when defense counsel argued that judicial intervention was unnecessary because the Governor and the Legislature have alternate methods of providing education, the *Guinn* court responded in a footnote: "We have no authority, under the separation of powers doctrine, to compel either the Governor or the Legislature to employ such methods."⁴⁸

The *Guinn* court further erred in finding that the constitutional provision mandating that the Legislature support public education and the constitutional provision requiring a supermajority vote to increase public revenue were "incompatible with one another."⁴⁹ By the express terms of the provisions, the supermajority vote only applies to granting appropriations to support the public education system when taxes or other public revenue will be raised to support education. The two provisions are not inherently in conflict. In fact, since Nevada residents voted the two-thirds amendment into the Nevada Constitution, the Legislature passed budget proposals and provided for education in 1997, 1999, and 2001 under a simple majority vote.⁵⁰

The fact that the two provisions came into conflict in the 2003 legislative session, for the first time in four legislative sessions, lends overwhelming support to the argument that the provisions merely have potential conflict, not inherent incompatibility, as the *Guinn* court suggests. As previously stated, the Legislature was able to pass a budget proposal and provide for the education system by purely legislative means, despite judicial interference, in a manner that satisfied the will of Nevada voters (a supermajority vote) and allowed educational appropriations to be distributed by the specified date. Interestingly, the *Guinn* court purported to interpret the Nevada Constitution under the guise that "provisions should be interpreted so as to avoid absurd consequences and not produce public mischief."⁵¹ This author is confident that many legal experts would agree that "absurd consequences and public mischief" are among the most apt descriptions of the aftermath of the *Guinn* decision.

⁴⁵ NEV. REV. STAT. 387.124(1).

⁴⁶ Sean Whaley & Ed Vogel, *State Legislature: Budget Approved*, LAS VEGAS REV.-J., July 22, 2003, at A1.

⁴⁷ NEV. CONST. art. 3, § 1(1) ("no persons charged with the exercise of powers properly belonging to one of these departments [legislative, executive, and judicial] shall exercise any functions, appertaining to either of the others").

⁴⁸ *Guinn*, 71 P.3d at 1274, n.9.

⁴⁹ *Id.* at 1274.

⁵⁰ *Id.*

⁵¹ *Id.* at 1275.

V. THE FUTURE OF *GUINN V. LEGISLATURE*?

Despite the many flaws in the *Guinn* court's reasoning, the future implications of this case should be of greater concern. Then-California Governor Gray Davis examined the *Guinn* precedent during the 2003 California "budget crisis."⁵² A spokesman for Governor Davis stated that seeking a writ of mandamus against the state legislature was "something that we could possibly look at in the future" to resolve budget proposal impasses.⁵³ This type of misuse of the judicial branch by state executive departments must be avoided. It is incumbent on the Nevada Supreme Court to defuse this potential separation of powers bomb before it explodes.

Along with the national ramifications of *Guinn* comes potential local chaos. As the district court pointed out, the only Court suitable to address the voting dilution claims of the plaintiff legislators, thereby voiding the *Guinn* decision, is the United States Supreme Court.⁵⁴ However, the plaintiffs would be required to raise an issue of federal question.⁵⁵ Since the Nevada Legislature passed a budget proposal under a supermajority vote, any federal question the Plaintiff legislators may have raised would now be deemed moot unless the Nevada Supreme Court ordered a future legislature to ignore the two-thirds amendment. Unfortunately, this potential future action is exactly the evil that must be avoided. The *Guinn* court, by holding that the "procedural" two-thirds vote amendment must give way to the "substantive" education provision, provides authority for judicial intervention if a proposal requiring an increase in public revenue to provide support for the educational system does not command a two-thirds vote.⁵⁶ Coincidentally, the *Guinn* court's holding in effect requires the "procedural" separation of powers provision to also give way to the "substantive" education provision. Such a circumstance was not the will of the Nevada taxpayers when they expressed, by an overwhelming vote, that the taxpayers' legislative representatives must agree by a two-thirds vote before taxes may be increased. The clear voice of the Nevada taxpayer was silenced by the Nevada Supreme Court in a situation the court should have avoided. Now the Nevada Supreme Court must do the honorable thing: admit the *Guinn* decision was wrong in order to restore Nevada voters' faith in the election process. The voters are, after all, the ones who made them Honorable Justices. In short, give Nevada voters their voice back.

⁵² *Nevada's Judicial Dice-Throwers*, WALL ST. J., July 15, 2003, at A14.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See 28 U.S.C. § 1257 (2000).

⁵⁶ *Id.*