

LAW SCHOOL FOR LEGISLATORS
Judicial Review of Legislative Action

I. Presumption of Validity

1. Unless there is an infringement of a constitutional right, the judiciary may not inquire into the reasonableness of the policy, the legislature's use in enacting a statute, nor may the courts inquire into the knowledge, motives, or methods of the legislature in passing legislation. *Cameron v. Auto Club Ins. Ass'n*, 476 Mich. 55, 718 N.W.2d 784 (2006).
2. It is a court's duty to construe a statute as constitutional unless the contrary is clearly the case. *Gora v. City of Ferndale*, 456 Mich. 704, 576 N.W.2d 141 (1998).
3. In cases of constitutional doubt, every possible presumption, not clearly inconsistent with the language and the subject matter is to be made in favor of the constitutionality of an act. *Frame v. Nehls*, 452 Mich. 171, 550 N.W.2d 739 (1996).
4. Constitutional issues and construction are questions of law and therefore are reviewed by appellate courts *de novo* or, in other words, this review is not limited by any factual or legal findings of an inferior court and is reviewed as if this is the first court to have looked at the issue. *Kuhn v. Secretary of State*, 228 Mich. App. 319, 579 N.W.2d 101 (1998).

II. Interpretation of constitutional provisions when reviewing acts of the legislature.

1. In interpreting constitutional provisions, the primary duty of the court is to ascertain the purpose and intent of the provision at issue. *White v. City of Ann Arbor*, 406 Mich. 554, 281 N.W.3d 283 (1979).
2. The primary objective in interpreting a constitutional provision is to determine the text's original meaning to those who ratified the provision and not those who proposed the provision and the courts may consult constitutional convention debates to determine the intent of the ratifiers in adopting the provision. *Studier v. Michigan Public School Employees' Retirement Board*, 472 Mich. 642, 698 N.W.2d 201 (1998).

III. Example of Judicial Review that Speak to the Mechanics of Legislation

While the impact of numerous specific constitutional provisions on limiting legislative priorities is beyond the scope of this presentation, certain provisions and court doctrine have a direct impact on all legislation. Two of the most commonly referenced topics in judicial review of statutes are the Title-Object constitutional provisions and the delegation of legislative authority doctrine.

1. **Title Object**

1. **Constitutional Provision**

No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title. Article 6 § 24.

2. **General Principles**

“The constitutional provision was designed mainly to prevent the legislature from passing laws not fully understood, it was intended that the legislature, in passing an act, should be fairly notified of its design, and that legislatures and parties interested might understand from the title that only provisions germane to the object therein expressed would be enacted, and to avoid bringing into one bill subjects diverse in their nature and having no necessary connection, but with a view to combining in their favor the advocates of all – or what is commonly spoken of as logrolling in legislation. *Maki v. City of East Tawas* 385 Mich 151 (1971).

a. **An Example**

In *Maki*, the title to PA 1964, No. 170 indicated that the act should create immunity for governmental acts of *negligence*. However, the act itself, in § 7, created immunity for a much broader area of governmental torts. The act would also have barred claims for direct trespass, assault and battery, false arrest, deceit, defamation, abuse of process, malicious prosecution and economic duress – all of which are tort actions apart from negligence and all of which might be brought against a governmental body. Therefore, the Court voided this immunity statute under Article IV § 24 of the Constitution.

3. **Delegation**

a. Challenges of unconstitutional delegation of legislative power are generally framed in terms of the adequacy of the standards fashioned by the Legislature to channel the agency’s or individual’s exercise of the delegated power. *Osius v. St. Clair Shores*, 344 Mich. 693, 698; 75 N.W.2d 25 (1956).

b. The criteria utilized in evaluating legislative standards are: 1) the act must be read as a whole; 2) the act carries a presumption of constitutionality; and 3) the standards must be reasonably precise as the subject matter requires or permits. The preciseness required of the standards will depend on the complexity of the subject, *Taylor v. Gate Pharmaceuticals* (2001) 248 Mich. 472.

- c. Additionally, due process requirements must be satisfied for the statute to pass constitutional muster. *State Highway Comm. v. Vanderkloot*, 392 Mich. 159.
- d. If sufficient standards and safeguards directed and checked the exercise of delegated power, the Legislature could safely avail itself of the resources and expertise of agencies to assist the formulation and execution of legislative policy, *Taylor*, supra.
- e. Delegation of direct authority to non Michigan governmental agencies or private individuals is an unconstitutional delegation of legislative power, but adoption by reference of federal statutes may be permissible under appropriate circumstances, *Taylor*, supra.

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