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THE SUPREME COURT AND LOCAL REAPPORTIONMENT: VOTER INEQUALITY IN SPECIAL-PURPOSE UNITS

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In recent years new forms of local government have been created to meet the demands of an increasing population for new governmental services and efficient allocation of limited resources. Faced with these political developments, the courts have been called upon to decide whether the states may experiment with malapportioned units of government designed to deal with specific problems affecting some interests in a community more than others.

In *Salyer Land Co. v. Tulare Lake Basin Water Storage District*[1] and in a per curiam opinion in *Associated Enterprises, Inc. v. Toltec Watershed Improvement District*[2] based on the decision in *Salyer Land Co.*, the Supreme Court upheld statutes authorizing disproportionate representation on the governing bodies of special districts. Decided on the grounds that such districts do not perform general public services and that their activities have a disproportionate effect on a recognizable group of individuals under the districts' jurisdictions, these cases present a further refinement in the Court's development of principles of apportionment for units of local government.

Salyer Land Co. involved the method of organization of a water storage district pursuant to the California Water Storage District Act.[3] Such districts are empowered to formulate plans "for the acquisition, appropriation, diversion, storage, conservation, and distribution of water . . . ."[4] To effectuate its plans, a district may "acquire, improve, and operate" facilities for the storage and distribution of water and any necessary drainage or reclamation works.[5] It may fix rates for the use

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1. 410 U.S. 719 (1973).

2. 410 U.S. 743 (1973).

3. CAL. WATER CODE §§ 39000-48401 (West 1966). The *Associated Enterprises* decision (*see* note 14 *infra*) also involved a special district created for the purpose of water management. The Supreme Court described the problems of adequate water supplies faced by the western states in California Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 142, 156-57 (1935), and in Fallbrook Irrigation Dist. v. Bradley, 164 U.S. 112, 151-54 (1896).

4. CAL. WATER CODE § 42200 (West 1966).

5. *Id.* § 43000. Such districts are also empowered to generate and distribute hydroelectric power. *Id.* § 43025.

of water and collect fees from those benefiting therefrom in proportion to the services rendered.[6] Costs of a project are assessable against the land in proportion to the benefits a given tract receives from the project.[7]

Management of a district is by a board of directors, each director being elected from a division within the district.[8] Only landowners are entitled to vote in district general elections,[9] and a landowner may vote in each division of the district in which he owns land. Moreover, votes are apportioned according to assessed valuation of the land.[10] As a result, residents of a district not holding title to any land therein have no say in the management of the district; landowners have a voice only to the extent of their holdings.

The Tulare Lake Basin Water Storage District consists of 193,000 acres of highly fertile, intensively cultivated land and has a population of 77 persons, including 18 children. Eighty-five percent of its land is owned by four corporations which employ most of the residents. The remaining acreage is divided among 189 other landowners who possess up to 80 acres each. The system of vote allocation provides the J. G. Boswell Co. with sufficient votes to dominate the administration of district functions by having its interests represented by a majority of the board of directors.[11]

For a number of years the minority landowners in the district evidently were content with the imbalance of political power. A conflict of interests followed by a natural disaster, however, led to the constitutional challenge of the franchise restriction in the special district. Although the policy of the Tulare district for many years had been to store flood waters downstream in the Buena Vista Lake, the board of directors, dominated by the J. G. Boswell Co., in 1969 rejected continuation of the policy. As a result, 88,000 of the 193,000 acres in the Tulare Lake Basin were inundated by flood waters. According to the plaintiffs, the reason behind the board's decision to change a successful practice was that the "J. G. Boswell Co. had a long term agricultural

6. *Id.* § 43006.

7. *Id.* §§ 46175-46176.

8. *Id.* §§ 40658, 39929.

9. "Only the holders of title to land are entitled to vote at a general election." *Id.* § 41000.

10. "Each voter . . . may cast one vote for each one hundred dollars ($100), or fraction thereof, worth of his land . . . in the precinct." *Id.* § 41001.

11. 410 U.S. at 735 (dissenting opinion). The position of the J. G. Boswell Co. is so strong that at the time the suit was filed there had been no election since 1947, the outcome being a foregone conclusion. *Id.*

lease in the Buena Vista Lake Basin and flooding it would have interfered with the planting, growing, and harvesting of crops the next season." [12]

The statutory provision restricting the franchise in district elections to landowners was challenged on the ground that nonlandowning residents have as much interest in the activities of the district as landowners, especially since most of the landowners are not residents. Support for the argument for equal representation was found generally in *Reynolds v. Sims*[13] and the series of local reapportionment cases which followed it and specifically in Supreme Court decisions invalidating state laws which restricted the franchise to landowners. A brief discussion of these decisions is essential to appreciation of the Court's rationale in rejecting the challenge to the Tulare vote allocation scheme.[14]

In 1967 the Supreme Court decided two cases involving local representation without establishing the extent to which the "one person, one

12. *Id.* at 737 (dissenting opinion).

13. 377 U.S. 533 (1964). *Reynolds* was decided two years after the Court's landmark ruling in Baker v. Carr, 369 U.S. 186 (1962), that apportionment suits are justiciable under the equal protection clause of the fourteenth amendment. The decision in *Baker*, however, did not delineate the degree of malapportionment the Court considered unconstitutional. The "one man, one vote" principle, hereinafter referred to as "one *person*, one vote" (*see* Wells v. Edwards, 93 S. Ct. 904 (1973) (dissenting opinion)), was announced as the appropriate standard for apportionment of congressional districts in Wesberry v. Sanders, 376 U.S. 1 (1964). The Court in *Reynolds* held the same standard applicable to apportionment of state legislative districts.

For discussions of early post-*Reynolds* decisions, see Weinstein, *The Effect of the Federal Reapportionment Decision on Counties and Other Forms of Municipal Governments*, 65 COLUM. L. REV. 953 (1967); 53 VA. L. REV. 953 (1967). In apparently the first local reapportionment case decided after *Reynolds*, a county court in Michigan provided what was to become a typical statement of strict adherence to the "one person, one vote" principle in local reapportionment cases: "The State may exercise its legislative powers only in a legislative body apportioned on a population basis and if it delegates a part of those powers, it must do so to a legislative body apportioned to the same 'basic constitutional standard.'" Brouwer v. Bronkema, No. 1855 (Cir. Ct., Kent County, Mich., Sept. 11, 1964), *aff'd by an equally divided court*, 377 Mich. 616, 141 N.W.2d 98 (1966). *See* 13 NATIONAL MUNICIPAL LEAGUE, COURT DECISIONS ON LEGISLATIVE REAPPORTIONMENT 81, 95 (1964).

14. Associated Enterprises, Inc. v. Toltec Watershed Improvement Dist., 410 U.S. 743 (1973), decided the same day as *Salyer Land Co.*, involved the identical issue and was the subject of a per curiam opinion. The Toltec district, organized pursuant to the Wyoming Watershed Improvement District Act, WYO. STAT. ANN. §§ 41-354.1 to -354.26 (Supp. 1973), exercised the same powers as the Tulare district and was organized for effectuation of, and engaged in, the same activities. For these reasons the Court held that its *Salyer Land Co.* decision controlled in excepting Toltec district elections from requirements of equal per capita apportionment.

vote"[15] standard announced in *Reynolds* for apportionment of state legislatures would be applied to governmental subdivisions below the state level.[16] The rulings, nevertheless, established some guidelines which proved important in later decisions.

Sailors v. Board of Education[17] involved a Michigan statute[18] permitting selection of members of county school boards by delegates, one of whom was sent from each district school board in the county. Despite disparate populations in the local districts ranging from 99 to 201,777, the Court upheld the statute, noting that the county boards were appointed instead of directly elected and that their duties were principally nonlegislative in nature.[19]

Of greater significance was the Court's decision in *Dusch v. Davis*.[20] To provide equitable representation for the diverse interests existing within the city of Virginia Beach, Virginia, following the city's consolidation with an adjoining county, a plan was formulated by which each voter cast ballots for one councilman from each of seven boroughs and for four at-large members. Notwithstanding the great disparity in the sizes of the boroughs, the Court upheld the plan as analogous to a Georgia plan it previously had declared valid.[21] The *Dusch* Court reasoned that the boroughs were used merely for purposes of residency, not representation. Crucial was the fact that the "Seven-Four Plan" was not a scheme to avoid the ramifications of reapportionment or to perpetuate incumbents in office. Moreover, the scheme did not result in disproportionate representation and made "no distinction on the basis of race, creed, or economic status or location."[22]

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15. *See* note 13 *supra*.

16. Two other cases in 1967 were remanded by the Court because of jurisdictional errors in using three-judge federal courts when the challenged laws were not of statewide application. Moody v. Flowers, 387 U.S. 97 (1967) (Alabama administrative board); Board of Supervisors v. Bianchi, 387 U.S. 97 (1967) (New York county board of supervisors).

17. 387 U.S. 105 (1967).

18. MICH. STAT. ANN. § 15.3294(1) (Supp. 1965).

19. 387 U.S. at 110. The Court stated that as long as the procedure does not violate a federally protected right, state or local administrative officials may be chosen "by the governor, by the legislature, or by some other appointive means rather than by an election." *Id.* at 108. It reserved, however, the question "whether a State may constitute a local legislative body through the appointive rather than the elective process." Id. at 109-10.

20. 387 U.S. 112 (1967).

21. Fortson v. Dorsey, 379 U.S. 433 (1965) (state senate).

22. 387 U.S. at 115.

Neither *Sailors* nor *Dusch* decided the ultmate issue of the applicability of *Reynolds* to apportionment of local governments. In *Sailors* the Court reserved the question whether the apportionment of local legislative bodies is governed by *Reynolds*, and in *Dusch* it stated only that if *Reynolds* controls, "the constitutional test under the Equal Protection Clause is whether there is an 'invidious' discrimination" embodied in the apportioning provision.[23]

The applicability of the *Reynolds* doctrine to local governments was answered partially the following year in *Avery v. Midland County*,[24] which involved the selection of four county commissioners representing districts with widely varying populations. Relying upon its precedents protecting against the dilution of votes in state legislative elections, the Supreme Court extended the principle of "one person, one vote" to local government bodies of general powers.[25]

In justifying its decision consolidating state and local governments in the same constitutional category, the Court emphasized:

> The Equal Protection Clause reaches the exercise of state power however manifested, whether exercised directly or through subdivisions of the State. . . . Although the forms and functions of local government and the relationships among the various units are matters of state concern, it is now beyond question that a State's political subdivisions must comply with the Fourteenth Amendment. The actions of local government *are* the actions of the State. A city, town, or county may no more deny the equal protection of the laws than it may abridge freedom of speech,

23. *Id.* at 116.

24. 390 U.S. 474 (1968).

25. A major legal obstacle to this ruling was U.S. CONST. amend. X, which implicitly recognizes a unitary relationship between a state government and its subdivisions. Significantly, a reaffirmation of this constitutional position was made in one of the first reapportionment cases:

> Political subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions. As stated by the Court in Hunter v. City of Pittsburgh, 207 U.S. 161, 178, . . . these governmental units are "created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them," and the "number, nature and duration of the powers conferred upon [them] . . . and the territory over which they shall be exercised rests in the absolute discretion of the state."

Reynolds v. Sims, 377 U.S. 533, 575 (1964).

> establish an official religion, arrest without probable cause, or deny due process of law.[26]

Noting that the states generally delegate power only to instrumentalities with a representative form of government, the Court concluded that there is "little difference, in terms of the application of the Equal Protection Clause and of the principles of Reynolds v. Sims, between the exercise of state power through legislatures and its exercise by elected officials in the cities, towns, and counties." [27]

The *Avery* Court, however, was careful to preserve the *Dusch* and *Sailors* caveat that states should be allowed substantial latitude in "devising mechanisms of local government suitable for local needs and efficient in solving local problems." [28] Noting that the Midland County Commissioners Court[29] exercises roughly the same powers as those vested in all elective governments of general powers,[30] the Court observed: "Were the Commissioners Court a special-purpose unit of government assigned the performance of functions affecting definable groups of constituents more than other constituents, we would have to confront the question whether such a body may be apportioned in ways which give greater influence to the citizens most affected by the organization's functions." [31] Thus deferring for later resolution the question

26. 390 U.S. at 479-80 (footnote omitted). The Court indicated that although a state legislature is apportioned correctly, elected local governing bodies are not thereby exempted from the force of the fourteenth amendment, observing: "While state legislatures exercise extensive power over their constituents and over the various units of local government, the States universally leave much policy and decisionmaking to their governmental subdivisions." *Id.* at 481.

27. *Id.* at 481 (footnote omitted).

28. *Id.* at 485.

29. Consisting of commissioners elected from districts, this governing body is chaired by the county judge, who is elected at large and who has only a tie-breaking vote. *Id.* at 476.

30. The classification of the commissioners court was based on the following interpretation:

> [T]he court does have power to make a large number of decisions having a broad range of impacts on all the citizens of the county. It sets a tax rate, equalizes assessments, and issues bonds. It then prepares and adopts a budget for allocating the county's funds, and is given by statute a wide range of discretion in choosing the subjects on which to spend. In adopting the budget the court makes both long-term judgments about the way Midland County should develop—whether industry should be solicited, roads improved, recreation facilities built, and land set aside for schools—and immediate choices among competing needs.

Id. at 483.

31. *Id.* at 483-84.

of apportionment of special-purpose government bodies, the implication that such units would be permitted to experiment with more flexible electoral designs was underscored by the Court's statement that "the Constitution imposes one ground rule for the development of arrangements of local government: a requirement that units with general governmental powers over an entire geographic area not be apportioned among single-member districts of substantially unequal population." [32]

Further significant development of principles of local apportionment resulted from the Court's decision in *Hadley v. Junior College District*,[33] involving the method of election of trustees for a Missouri junior college district. Under the statutory scheme,[34] one of the units of the district, although containing 60 percent of the total school enumeration,[35] was entitled to elect only three of the six trustees. While noting that the powers of the junior college district trustees were "not fully as broad" as those of the commissioners court in *Avery*, the Court held that such powers were "general enough and have sufficient impact throughout the district to justify" application of the "one person, one vote" principle.[36]

In the Court's attempt to delineate the extent to which *Reynolds* applies to local governments, it was emphasized that the decision by a state to make a local office elective indicates the importance of that office to the community at large. Accordingly, the Court enunciated the following "general rule":

> [W]henever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate

32. *Id.* at 485-86 (emphasis supplied). The effect of the decision in *Avery* was limited, since only about 25 percent of local governing bodies are chosen from districts. Brief for the United States as Amicus Curiae at 110, Sailors v. Board of Education, 387 U.S. 105 (1967).

33. 397 U.S. 50 (1970).

34. The statute provided that if none of the electoral units in the district had at least one-third of the total population in the district between the ages of six and 20 years (defined as the "school enumeration"), then all trustees were to be chosen at large. If a district contained between one-third and one-half of the school enumeration, it would elect two trustees, the remainder being chosen at large. A unit containing between one-half and two-thirds of the district's school enumeration, as did the unit in *Hadley*, elected three trustees, while a unit with more than two-thirds of the school enumeration selected four trustees; in both cases, the balance of the six trustees were chosen at large.

35. *See* note 34 *supra*.

36. 397 U.S. at 54-55.

> in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials.[37]

This seemingly sweeping statement was qualified, however, in several respects. Most significant for purposes of the present discussion was the Court's speculation that "there might be some case in which a State elects certain functionaries whose duties are so far removed from normal governmental activities and so disproportionately affect different groups that a popular election in compliance with *Reynolds* . . . might not be required . . . ." [38] The types of government units falling within this category and the amount of deviation which would be constitutionally permissible were not specified.[39] Using the Missouri Junior College District as an example, however, the Court excluded education from the hypothetical exception, noting that "[e]ducation has traditionally been a vital governmental function, and these trustees, whose election the State has opened to all qualified voters, are governmental officials in every relevant sense of that term." [40]

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37. *Id.* at 56.

38. *Id.*

39. Although disagreeing with the decision of the majority as an unwarranted extension of the "one person, one vote" requirement, Chief Justice Burger, in dissent, also faulted the majority for failing to delineate more clearly when an exception to its "general rule" is appropriate, stating: "[T]he Court has given almost no indication of which nonpopulation interests may or may not legitimately be considered by a legislature in devising a constitutional apportionment scheme for a local, specialized unit of government. *Id.* at 70-71.

40. *Id.* at 56. The Court further qualified its "general rule" by reaffirming the rule announced in Dusch v. Davis, 387 U.S. 112 (1967), that combining an at-large election with a requirement that candidates be residents of certain districts of unequal population does not violate principles of equal representation. *Id.* at 58. (*See* notes 20-22 *supra* & accompanying text). Also afforded recognition was the holding in Sailors v. Board of Education, 387 U.S. 105 (1967), that if officials are appointed, and such appointment does not itself offend the Constitution, the fact that the officials "represent" different numbers of individuals does not make the system invalid. *Id.* (*See* notes 17-19 *supra* & accompanying text). Finally, the Court reiterated the statement in Reynolds v. Sims, 377 U.S. 533, 577 (1964), that mathematical exactness is not required so long as there is no systematic discrimination. *Id.*

In Abate v. Mundt, 403 U.S. 182 (1971), the Court considered a plan for reapportioning a county board of supervisors, which traditionally had been composed of officials from the five townships located in the county. The plan called for the smallest town to be allotted one board member, the population of that town then being divided into that of each of the other towns to determine the number of board members they would elect. Uneven quotients were rounded to the nearest integer. Despite a total

Before the challenge to the scheme of representation used in the Tulare Water District, the Supreme Court on several occasions had held that the franchise cannot be restricted to a particular class of voters unless there exists a state interest which can be best served by the exclusion of otherwise qualified voters. *Kramer v. Union Free School District*[41] involved a New York statute limiting the franchise in school district elections to owners or lessees of taxable real property located in the district, their spouses, and those with children enrolled in the district's schools. Chief Justice Warren, writing for the Court, stated that in the absence of a "compelling state interest"[42] otherwise qualified voters could not be denied the right to vote in district elections. Although the Court found such interest lacking in this instance, it left open the possibility that in a situation where some individuals were affected by the outcome of an election and the activities of the local government more than others, a voting plan limiting the franchise to those "primarily affected" *might* be held valid.[43]

In *Cipriano v. City of Houma*,[44] the Court, in a per curiam opinion, invalidated a Louisiana statute restricting to property owners the vote in elections for the approval of revenue bonds. It was held that nonproperty owners were not substantially less affected by the level of bonding, since the purpose of the bond income was to improve utility systems serving all local residents. Moreover, since the bonds were to be repaid from the revenues of the utilities, the burden of repayment fell upon landowners and nonlandowners alike.[45]

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deviation from equality of 11.9 percent, the Court upheld the plan, primarily because the "indigenous bias" favoring one geographic area over another, found and condemned in *Hadley*, was not present. *Id.* at 186. The Court noted that the plan did not result in systematic discrimination in favor of or against any identifiable group or town; rather, any discrimination resulting from the "rounding off" procedure would be random only and hence constitutional. This reasoning was buttressed by the Court's declaration that the "particular circumstances and needs of a local community as a whole may sometimes justify departures from strict equality." *Id.* at 185. Additionally, "the long history of, and perceived need for, close cooperation between the county and its constituent towns" and the county's attempt to retain intergovernmental coordination while correcting, to a considerable degree, the severe malapportionment which had developed in its old system were found to warrant validation of the plan. *Id.* at 186.

41. 395 U.S. 621 (1969).

42. *Id.* at 627, 630.

43. *Id.* at 632.

44. 395 U.S. 701 (1969).

45. *Id.* at 705.

Applying the rationale of *Kramer* and *Cipriano*, the Court in *Phoenix v. Kolodziejski*[46] struck down another statute limiting the franchise to property owners in elections for the approval of general obligation bonds. The contention in favor of this method of bond approval stressed that the burden of servicing the bonds was placed by law on property owners through property taxes and secured by the general taxing power of the local government, which in turn relied on property taxes for most of its revenue. Rejecting the argument that property owners thus were affected to a significantly greater extent than other residents, the Court noted that half the debt service would be paid from local revenues other than the property tax and that a significant portion of the burden of the property tax would be passed along by lessors to tenants.[47] It was held that since all residents were substantially interested and affected by the public facilities to be funded by the bonds, there was no compelling state interest for limiting the franchise to property owners.

In *Salyer Land Co.*, the Court finally identified, in the Tulare Water Storage District, a unit of local government the powers of which are sufficiently specific and the activities of which have a sufficiently disproportionate effect upon an identifiable group to warrant application of the exception, alluded to in *Hadley*, to the "one person, one vote" requirement. Distinguishing its prior decisions upon which plaintiffs relied, the Court stated that *Cipriano* and *Phoenix* involved local governments with general governmental powers as defined in *Avery* and that *Kramer* and *Hadley* extended the *Reynolds* rule to school districts with powers which, while not as broad as those of the commissioners court in *Avery*, were general enough and had sufficient impact throughout the district to warrant application of the "one person, one vote" principle imposed on local governments in *Avery*.

The Tulare district, in contrast, was found to be a "special-purpose" government. The Court conceded that the district is vested with some of the powers normally exercised by governments of general authority, such as maintaining a staff of professional employees,[48] contracting for the construction of projects,[49] condemning private property for district use,[50] cooperating with federal and state agencies,[51] and incurring in-

46. 399 U.S. 204 (1970).
47. *Id.* at 209-10.
48. CAL. WATER CODE § 43152(c) (West 1966).
49. *Id.* § 43152(b).
50. *Id.* §§ 43530-43533.
51. *Id.* § 43151.

debtedness through the issuance of bonds.[52] It was emphasized, however, that the district did not engage in other traditional governmental activities, such as providing schools, roads, housing, utilities, police and fire protection, or transportation, nor were there any district subdivisions or towns to administer these functions. In dismissing the argument that the district should not be classified as a "special-purpose" government because its flood control activities affected the entire community, the Court stated that this responsibility was incidental "to the exercise of the district's primary functions of water storage and distribution." [53]

With respect to the second requirement of the exception suggested in *Hadley* to the principle of "one person, one vote," the Court found that the district's policies and projects have a substantially greater effect upon landowners than upon nonlandowning residents. It was noted that the district government is financed by assessing all landowners for project costs according to the benefit received, and that, similarly, a cost-benefit ratio is employed to levy charges for services performed by the district. In addition, delinquent payments result in a lien on the land involved. The Court determined that these factors conclusively established that "there is no way that the economic burdens of district operations can fall on residents *qua* residents" and that "the operations of the districts primarily affect the land within their boundaries." [54] Thus, having classified the Tulare Water Storage District as a "special-purpose" government unit and having determined that its activities have a disproportionate effect on an identifiable group of citizens, the Court held that "the popular election requirements enunciated by *Reynolds* . . . and succeeding cases are inapplicable . . . ." [55]

In addition to attacking the land ownership requirement, plaintiffs challenged the constitutionality of the weighting of the vote in Tulare district elections according to land valuation. Their contention was based on the fact that while some of the smaller landowners had but

52. *Id.* §§ 44900-45900.

53. 410 U.S. 719, 728-29 n.8 (1973).

54. *Id.* at 729 (footnote omitted).

55. *Id.* at 730. The wording of this statement makes it somewhat misleading. Although the strict "one person, one vote" rule was held inapplicable, the general rationale supporting the *Reynolds* decision still applied. Thus, in affirming the three-judge lower court, the Court upheld that tribunal's requirement that the district be reapportioned to the extent that all of its divisions, each of which elected one board member, contain land with the same aggregate valuation. *See* Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., 342 F. Supp. 144, 146-47 (1972).

one vote, the J. G. Boswell Co. had 37,825 votes.[56] To the Court, plaintiffs' argument ignored "the realities of water storage district operation."[57] It was noted that the capital cost of the most recent district project of almost $2,500,000 required an assessment of $13.26 per acre. A sampling of the levies indicated that the total amount collected from three landowners, each of whom was entitled by valuation to one vote, was $46, while the J. G. Boswell Co. paid $817,685. That the burdens as well as the benefits of district operations were allocated in proportion to land valuation established to the satisfaction of the Court that the plan was "rationally based," and hence constitutional.[58]

As a further justification for upholding the plan for weighting votes, the Court observed that the California statutory system affords protection to minority interests which may be affected by a district's projects. Any proposed project of a water storage district must be approved by the state treasurer,[59] who must conduct an independent investigation and certify a detailed report of the expenses of the project.[60] After a proposal clears these hurdles, a special election is held in the district;[61] commencement of a project requires approval both by a majority of the total votes assigned to the landowners and by a majority of the eligible landowning voters.[62] The Court stressed that since about 190 of the smallest landowners in the district hold only 2.34 percent of the land, the requirement of dual majorities makes it possible for those owning only a small fraction of the district's acreage to defeat projects they consider contrary to their best interests.[63]

Admittedly, minority rights can be protected by the stipulation of the two voting categories for project confirmation; this procedure, however, does not apply to other matters of equal importance. How, for example, are disfranchised residents and smaller landowners to protest decisions detrimental to their interests and properties when the governing board is dominated by a single large landowner? The events culminating

56. Plaintiffs relied on various Supreme Court rulings that wealth has no relation to voter qualifications and that the franchise cannot be denied because of any requirement utilizing that relationship. *See, e.g.*, Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966); Gray v. Sanders, 372 U.S. 368 (1963).

57. 410 U.S. at 734.

58. *Id.* at 734-35.

59. CAL. WATER CODE § 42275 (West Supp. 1973).

60. *Id.* §§ 42275-42280.

61. CAL. WATER CODE §§ 42325-42332 (West 1966).

62. *Id.* § 42550.

63. 410 U.S. at 723 n.3, 734 n.10.

in the flooding of the Tulare Lake Basin in 1969 illustrate the potential effects on a majority which has little or no participation in a government making decisions for everyone living or owning land under its jurisdiction.[64] Individual rights clearly are jeopardized by this kind of political process, and justifying electoral exclusion with economic arguments is not supported by reason or precedent. Nevertheless, these factors were prominent in the Supreme Court's opinion that:

> Since the subjection of the owners' lands to [assessments] . . . was the basis by which the district was to obtain financing, the proposed district had as a practical matter to attract landowner support. Nor, since assessments against landowners were to be the sole means by which the expenses of the district were to be paid, could it be said to be unfair or inequitable to repose the franchise in landowners but not residents. Landowners as a class were to bear the entire burden of the district's costs, and the State could rationally conclude that they, to the exclusion of residents, should be charged with responsibility for its operation.[65]

Mr. Justice Douglas, in dissent, argued the invalidity of the California scheme of restricted representation on the ground that the state's water storage districts perform important governmental functions having a significant impact throughout their territories. Such functions include, besides those listed by the majority,[66] governmental immunity from suit,[67] exemption from taxation,[68] and the power of eminent domain.[69] The dissent stressed, in addition, that one of the responsibilities of the districts is flood control. Justice Douglas concluded that "[a]s a nonlandowning bachelor was held to be entitled to vote on matters affecting education, . . . so all prospective victims of mismanaged flood control projects should be entitled to vote in water district elections . . . ."[70]

If it could be established that the functions of the Tulare district always have disproportionate effect upon part of the district's electorate, as in the case of irrigation, the arguments of the majority would have

64. *See* note 12 *supra*.

65. 410 U.S. at 731.

66. *See* notes 48-52 *supra* & accompanying text.

67. CAL. GOV'T CODE §§ 811.2, 815 (West 1966).

68. CAL. WATER CODE § 43508 (West 1966).

69. *Id.* § 43530.

70. 410 U.S. at 739. The dissent also argued that it is "grotesque to think of corporations voting within the framework of political representation of people" and that the result of the Court's decision is to leave intact "a corporate political kingdom undreamed of by those who wrote our Constitution." *Id.* at 741-42.

some merit. It is submitted, however, that when, as occurred in the Tulare district in 1969, a determination of the governing body dictated by the interests and effected by the decisive influence of a single landowner results in severe damage to the interests of a group which is effectively disfranchised, the argument for constitutionality pales considerably.

The presence of procedural safeguards, such as those to which the Court pointed in support of its decision, should not be used to justify the denial of the right to suffrage to any citizen. Neither dual voting for project approval nor participation in a public hearing to determine the administrative feasibility of establishing a new unit of government are adequate substitutes for the right to vote on policies directly affecting all residents. Although it is arguable whether the Tulare district is a "general" or "special-purpose" unit of local government, the importance of flood control to *all* residents of the district, irrespective of their status as landholders or the extent of their holdings, appears to demand equal representation in accordance with previous decisions of the Court.

Conclusion

The creation of innovative forms of local government to meet the demands of society clearly is desirable. Nevertheless, the extent to which innovation results in disfranchisement of individuals subject to the jurisdiction of a governmental body requires the closest scrutiny. Where significant interests of a group of citizens can be affected by a government without provision for effective representation of such interests, the policy of innovation must give way to constitutional demands of equal protection of the laws. In this respect, the decision of the Supreme Court subjecting residents and minority landowners in the Tulare Water Storage District to the caprice of a single powerful corporation is a deluding and disappointing retreat from principles of voter equality.