# Governing Special Districts: The Conflict Between Voting Rights and Property Privileges

by

Tim De Young

Originally published in ARIZONA STATE LAW JOURNAL
Ariz. St. L. J. 419 (1982)

# Governing Special Districts: The Conflict Between Voting Rights and Property Privileges

Tim De Young*

## I. Introduction

On April 29, 1981, the United States Supreme Court in *Ball v. James*[1] upheld the constitutionality of the voting system on the Salt River Agricultural Improvement and Power District [hereinafter Salt River District]. Like many irrigation districts in the western United States, the Salt River District restricts voting and participation in district activities to individuals who own land. Votes are allocated in direct proportion to the number of acres owned; landowners receive one vote for each acre.[2] The plaintiffs alleged that this voting scheme denied many district residents their constitutional right to equal protection. The District countered that the voting restrictions were necessary to fulfill the District's statutory objectives.

After the district court upheld the constitutionality of the voting scheme, the Ninth Circuit reversed the decision,[3] reasoning that the case was governed by the one-person, one-vote principle established in *Reynolds v. Sims*[4] rather than by the exception to that principle established in *Salyer Land Co. v. Tulare Lake Water Storage District*.[5] *Salyer* upheld the provisions of the California Water Code which permitted only landowners to vote for directors of a water storage district because of its special limited purpose and the disproportionate effect of its activities on landowners as a group.[6] In reversing the Ninth Circuit, the Supreme

---

* Assistant Professor, Division of Public Administration, University of New Mexico. B.A. 1970, Chapman College; Ph.D. 1977, Claremont Graduate School.

1. 451 U.S. 355 (1981).
2. Ariz. Rev. Stat. Ann., §§ 45-902 to -903 (1956).
3. James v. Ball, 613 F.2d 180 (9th Cir. 1979).
4. 377 U.S. 533 (1964).
5. 410 U.S. 719 (1973).
6. *Id.* at 728.

Court held that:

> [The] district's purpose is sufficiently specialized and narrow and its activities bear on landowners so disproportionately as to release it from the strict demands of the *Reynolds* principle. As in *Salyer*, . . . the voting scheme for the district is constitutional because it bears a reasonable relationship to its statutory objectives.[7]

Rather than making the District prove that the restriction served a compelling state interest, the Court decided that the limited nature of the district only required that the enabling statute bear some relevancy to the statute's objectives.[8]

The Court's decision is surprising because the Salt River District is clearly unlike the Tulare Lake District. The Tulare Lake District served a rural population of under 100 persons and over three-fourths of the land was owned by four corporations. In *Salyer*, the District did not engage in the provision of power and all District costs were assessed against landowners.[9] In contrast, the Salt River District provides water and power services to a densely populated urban community. The District's 236,000 acres include most of the Phoenix metropolitan area and over 40% of the District's water is used for urban purposes while its electric operations serve about 75% of the Phoenix area and its eight major suburbs. The District also contains nearly 50% of Arizona's population,[10] over 359,000 property owners and customers in all.[11] In addition to six massive dams for water storage and power generation, the District manages 248 deep wells, 131 miles of canals, 878 miles of laterals, and 250 miles of drainage and waste ditches. The District has been an active participant in a number of large electric power projects including the Four Corners facilities near Farmington, New Mexico, and the Palo Verde Nuclear Generating Station, and numerous other facilities in Arizona, Colorado, Utah, and New Mexico.[12] The costs of the District's activities are not borne solely by landowners. About 98% of the District's revenues are supplied by its electric consumers while only about 12% of the District's debt is secured by a lien on the land within the District.[13] Despite the marked dissimilari-

---

7. 451 U.S. at 355.
8. *Id.* at 364.
9. 410 U.S. at 818.
10. Stipulated Statement of Facts 33-37, Ball v. James, 451 U.S. 355 (1981) [hereinafter Stipulated Statement of Facts].
11. K. DE COOK, J. EMEL, S. MACK & M. BRADLEY, WATER SERVICE ORGANIZATIONS IN ARIZONA 182 (Water Resources Research Center, College of Earth Sciences, Univ. of Ariz., 1978) [hereinafter K. DECOOK].
12. *Id.* at 183.
13. Stipulated Statement of Facts, *supra* note 10, at 37.

ties, the Court concluded that the differences between the districts were not of decisive constitutional significance.[14]

*Ball v. James* is especially significant in the Western states where many water districts possess similar property qualifications and/or weighted voting systems, and these districts manage a substantial proportion of the water used in the West. From a larger perspective, this decision concerns a number of perennial political issues: the proper relationship between state's rights and federal constitutional guarantees, the extent to which economic power (via the ownership of property) should determine political power (via voting and holding political office), and more generally, the question of who shall vote in a democratic society.

This article will first consider the Court's decision in the context of two opposite trends, the history of extending the suffrage and the increasing number of irrigation districts with property qualifications for voting. Attempts to extend popular suffrage to limited purpose governments results in conflict between two views of voting, voting as a right versus voting as a privilege. More importantly, this conflict concerns the inevitable clash between two traditional American values, equality and property ownership.

Tracing the evolution of voting decisions by the Supreme Court indicates that resolving this conflict is not an easy task. The Court's interpretations are not devoid of ideological influences, as there is, in fact, a considerable correlation between the political stance of different Courts and the way in which voting cases are resolved. The Warren Court tended to view voting as a right; the Burger Court, like pre-Warren era Courts, generally views voting as a privilege. Differences in perspective result in the differential application of tests or criteria to evaluate individual special governmental district cases. This article will review two such criteria, the rational basis test and the strict scrutiny test.

Finally, this article will summarize and evaluate the *Ball v. James* decision in detail. A close look at the Salt River District's development, statutory powers, and activities indicates that the Court's decision ignores or deprecates the relevance of a number of principles established in earlier decisions. The Court's decision also leaves a number of unanswered questions related to governance by special governmental districts.

---

14. 451 U.S. at 355.

## II. VOTING AND SPECIAL GOVERNMENTAL DISTRICTS

### *A. Extending the Suffrage*

Determining who shall be allowed to vote in a democratic society is a difficult and controversial task. When the founding fathers met in Philadelphia, voting generally was *not* acknowledged to be a right of all citizens.[15] Rather, it was commonly thought to be a privilege granted to those who must "suffer" the actions of government whether it be taxes, allegiance, service or benefits. Restricting the suffrage to landowners, white males, and those able to pay a poll tax was standard practice in colonial America and in the new republic.[16] The manner of elections was reserved to the states in article I, section 4 of the Constitition, and most states strictly limited the franchise.[17]

With the arrival of an increasing number of property-less workers and the evolution of mass democracy, voting restrictions steadily decreased in 19th century America.[18] Property qualifications were generally the first class of restrictions to be abolished by the states. By 1850 property qualifications for voting and holding major political offices, and weighted voting systems were the exception rather than the rule.[19] In 1870, the passage of the fifteenth amendment made national and state restrictions based on race or national origin unconstitutional. Significantly, the phrase "the right . . . to vote" appeared in the Constitution for the first time in both the fourteenth and fifteenth amendments. Fifty years later, the right to vote was extended to women via the nineteenth amendment. Poll taxes were prohibited in federal elections by the twenty-fourth amendment and literacy tests and similar restrictions on the right to vote were limited by the Voting Rights Act of 1965.[20] Finally, a multitude of Court decisions have resulted in the elimination of property restrictions in most local elections.

Today, few consider voting to be a privilege. The steady extension of suffrage and the implementation of constitutional voting guarantees lead to the perception that voting is a right. Voting and elections form the base of most modern theories of democracy. Moreover, the role of voting goes beyond politics. In the United States, voting acts as an inclusion process,

---

15. C. BEARD, HISTORY OF THE UNITED STATES 239 (1921).
16. W. ELLIOT, THE RISE OF GUARDIAN DEMOCRACY 34-54 (1971). *See* Kirby, *The Constitutional Right to Vote*, 45 N.Y.U. L. REV. 955 (1970).
17. W. ELLIOT, *supra* note 16, at 41.
18. *Id. See also* Wellhofer, *The Political Incorporation of the Newly Enfranchised Voter: Organizational Encapsulation and Socialist Labor Party Development*, 34 W. POL. Q. 399 (1981).
19. C. BEARD, *supra* note 15, at 245.
20. 42 U.S.C. § 1971 (1965).

a socializing agent that embodies basic values of equality, participation, and responsibility.[21] But in reality, voting is a privilege that is conditioned on age, length of residence, criminal record, and, in a number of special governmental district elections, land ownership.

### *B. Irrigation Districts in the Western States*

Special governmental districts are the most numerous type of government in the United States. Census Bureau statistics show that the number of non-school special governmental districts has roughly tripled since 1942.[22] Additionally, existing districts have in general greatly increased in size as measured by fiscal transactions, number of employees, and area and clientele served.[23] It is, therefore, surprising to note that scant attention has been devoted to these special governments. In a pioneering study published in 1957, John Bollens noted that special districts constituted the "new dark continent of American politics."[24] Over twenty years later, a review of scholarly literature suggests that not much exploration has occurred. Governance by special district, however, may create significant problems in urban areas by fragmenting governmental responsibilities, inhibiting political accountability, and contributing to the inefficient delivery of services.[25] The extent to which irrigation districts contribute to these problems is largely unknown, but information about the evolution, prevalence, type of governing board, and location of irrigation districts may provide some insight.

*Table 1* below summarizes the prevalence of both property qualifications and weighted voting systems in selected types of irrigation districts in eleven Western states. Note that only three of the twenty-six types of districts surveyed are governed by appointed governing boards and only one type of district popularly elects the governing board. In the remaining twenty-two types of irrigation districts, ownership of property is a requirement for both voting and holding office. In addition, sixteen or nearly 70% of the property qualifacation statutes authorize weighted voting systems. In contrast, only seven of the property qualification district types require one-landowner, one-vote systems. Thus, the enabling legislation of irriga-

---

21. R. CLAUDE, THE SUPREME COURT AND THE ELECTORAL PROCESS 254-57 (1970).

22. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, 1977 CENSUS OF GOVERMENTS, No. 2, *Finances of Special Districts* 1 [hereinafter 1977 CENSUS OF GOVERMENTS]; *see also* Leshy, *Irrigation Districts in a Changing West—An Overview*, 1982 ARIZ. ST. L.J. 345, 347 nn.10-12.

23. 1977 CENSUS OF GOVERNMENTS, *supra* note 22, at 1.

24. J. BOLLENS, SPECIAL DISTRICT GOVERNMENTS IN THE UNITED STATES 2 (1957).

25. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, THE PROBLEM OF SPECIAL GOVERNMENTAL DISTRICTS IN AMERICAN GOVERNMENT 43-52, 74 (1965).

Table 1: Property Qualifications and Weighted Voting Provisions for Voting in Irrigation District Elections in Eleven Western States[26]

| State | District Type | Property Qualification | Weighted Voting |
|---|---|---|---|
| Arizona | Agricultural Improvement | Yes | Yes |
| | Irrigation | Yes | Varies[a] |
| | Irrigation Water Delivery | Yes | No |
| | Irrigation and Drainage | Yes | No |
| | Water Conservation | Yes | Yes |
| California | California Water | Yes | Yes |
| | Irrigation | Yes | No |
| | Reclamation | Yes | Yes |
| | Water Storage | Yes | Yes |
| | Water Conservation | Yes | Varies[a] |
| Colorado | Irrigation | Yes | Yes |
| | Water Conservancy | No[b] | No[b] |
| Idaho | Irrigation | Yes | No |
| Montana | Irrigation | Yes[c] | Yes[c] |
| | Conservancy | Yes | No |
| Nevada | Irrigation | Yes[d] | No |
| | Water Conservancy | No[b] | No[b] |
| New Mexico | Irrigation | Yes | Varies[a] |
| | Conservancy | Yes | Varies[a] |
| Oregon | Irrigation | Yes | No |
| Utah | Irrigation (Water Conservation) | Yes | Yes |
| | Water Conservancy | No[b] | No[b] |
| Washington | Irrigation | Yes | Yes |
| Wyoming | Irrigation | No | No |
| | Watershed Improvement | Yes | Yes |

[a] - "Varies" indicates that weighted voting schemes are employed by some but not all districts of this type.

[b] - These districts are governed by an appointed Board of Directors. Directors are appointed by various officials including district judges, county commissioners, etc.

[c] - These districts are established by district courts. Subsequent elections are conditioned by property qualifications and weighted voting.

[d] - In these districts, elector must own twenty acres or more to vote in the district formation election. All property owners can vote in subsequent elections.

---

26. Compiled by the author from relevant state statutes and selected documents. Only districts that primarily perform agricultural functions are included. Districts created by individual legislative acts are not included.

tion districts in these states make voting a privilege based on property ownership. A brief review of the the evolution of these districts as well as the rationale for restricting and/or weighting the vote is instructive.

Historically, the first state law providing for the creation of irrigation districts was California's Wright Act of 1887.[27] By 1921, seventeen Western states had passed similar irrigation district enabling legislation.[28] Throughout the arid West, the formation of irrigation districts was stimulated by the failure of many private interests to amass enough capital to build sufficiently large large irrigation projects and by increased opportunities for federal subsidies. Federal reclamation projects provided the lion's share of subsidies, and federal legislation eventually encouraged the formation of irrigation districts by authorizing the Bureau of Reclamation to contract directly with irrigation districts rather than with private companies or water user's associations.[29] Hence, many private water companies evolved into irrigation districts. Most state enabling legislation was attractive to private interests because many of the attributes of the private corporation were retained including participation restrictions, autonomy, and methods to allocate costs and benefits in direct proportion to investment.[30] In addition, the company was granted many prerogatives of government. Irrigation districts generally may exercise the power of eminent domain, levy taxes or special assessments, and secure financial assistance through the issuance of bonds, the interest on which is exempt from federal taxation.[31]

Of course, the notion that political power should mirror one's stake in the community is not a new idea, nor were irrigation districts the first political institutions to restrict the franchise. As noted above though, the idea that the protection of private property necessitated voting restrictions has been discarded in almost all states. Private property is protected in governmental jurisdictions where such restrictions do not exist, and the ownership of private property and popular voting are not generally regarded as incompatible practices. Why, then, does irrigation district legislation authorize property qualifications? The rationale for restricting and weighting votes clearly relates to the limited nature of irrigation district activities.

Irrigation of land is a proprietary activity, that is, an activity that prin-

---

27. Wright Act, ch. 34, 1887 Cal. Stat. 29. Votes were allocated on a one landowner, one vote basis in this legislation. *Id.* § 2, 1887 Cal. Stat. 29, 30.

28. 4 R. SWENSON, WATERS AND WATER RIGHTS § 345.1 (R. Clark ed. 1970).

29. Leshy, supra note 22, at n.66.

30. 4 R. SWENSON, *supra* note 28, at § 345.2.

31. *See* W. HUTCHINS, SUMMARY OF IRRIGATION DISTRICT STATUTES OF WESTERN STATES (U.S. Dep't of Agriculture Misc. Publ. 103, 1931).

cipally benefits property. Property owners would rationally prefer to control such an activity especially if they were forced to pay for most or all irrigation. Irrigation district statutes typically do require that costs be assessed in direct proportion to benefits received.[32] Second, these statutes usually restrict the district to water related services. Thus, most irrigation districts are quite unlike popularly elected bodies that provide a wide range of services.[33] Given that land ownership is unequally distributed in an irrigation district, participants often developed a proportional voting system to reflect differential investments. Weighting votes according to the number of acres owned traditionally has been employed in those regions of the arid West formerly under Spanish rule.[34] Moreover, weighting votes is analogous to shareholder voting systems commonly used by private water companies.

*Table 2* below compares the number of weighted voting districts to the number of one-landowner, one-vote districts in Arizona, New Mexico, and California. In these states, roughly one half of all irrigation districts surveyed weight votes by some formula. A study of California irrigation districts indicates that voting system preference is positively correlated with land tenure patterns; weighted vote districts are preferred in areas where land is held in large tracts by individuals and/or corporate interests.[35] Weighting votes in such districts may result in the monopolization of district policies by a minority of landowners who have gained control of the district by virtue of their ownership of a majority of the land. In such a case, a system designed to benefit property may result in decreased property benefits for the majority of landowners, if not a majority of acres served.

---

32. *See* Comment, *Desert Survival: The Evolving Western Irrigation District*, 1982 ARIZ. ST. L.J. 377, 387-88.

33. 4 R. SWENSON, *supra* note 28, at § 345.3.

34. *See* De Young, *Searching for the Milagro Beanfield: The Politics of Surface Water Management in New Mexico*, 8 PUB. SERV. 1, 3 (1980); Hutchins, *The Community Acequia: Its Origin and Development*, 31 S.W. HIST. Q. 261 (1928).

35. M. GOODALL, V. SULLIVAN AND T. DE YOUNG, CALIFORNIA WATER: A NEW POLITICAL ECONOMY 11 (1978) [hereinafter M. GOODALL].

Table 2: Irrigation Districts in Arizona, California, and New Mexico by Type of Voting System[36]

| State | Year[a] | TYPE OF VOTING SYSTEM | |
|---|---|---|---|
| | | One Landowner/ One Vote % (N) | Weighted Voting % (N) |
| Arizona | 1978 | 51.2 (21) | 48.8 (20) |
| California | 1969 | 36.6 (97) | 63.4 (168) |
| New Mexico | 1980 | 47.1 (8) | 52.9 (9) |
| Totals | | 39.0 (126) | 61.0 (197) |

[a] - Indicates the year data was compiled.

Despite the problems inherent in weighting votes, the preferences of landowners are well served by an irrigation district. Districts provide the advantages of subsidies, the power to tax and to incur bonded indebtedness, and related powers normally associated with government. Yet, on the other hand, property qualifications assure landowner control of a strictly limited enterprise that is relatively independent from established general governments. The desire for autonomy is especially attractive to special interests who possess a major interest in a single function, e.g., irrigation.[37] *Table 3* below summarizes the number of irrigation and water conservation districts formed within the Western states from 1952 to 1977. The districts have proliferated in some states while the number of districts has remained relatively stable in other states. Arizona, Colorado, and Oregon, for example, have over twice as many irrigation districts today as in 1952, whereas Idaho, Montana, and Washington have roughly the same number of districts. The remaining states generally exhibit stable growth patterns.

36. Arizona data compiled from K. DE COOK, supra note 11; California data is from M. GOODALL, *supra* note 35. New Mexico data is from NEW MEXICO LEGISLATIVE COUNCIL SERVICE, INDEX TO SPECIAL DISTRICT GOVERNMENTS (1980).

37. J. BOLLENS, *supra* note 24, at 10.

Table 3: Irrigation and Water Conservation Districts in Eleven Western States, 1952-77[38]

| State | Year 1952 | 1957 | 1962 | 1967 | 1972 | 1977 |
|---|---|---|---|---|---|---|
| Arizona | 24 | 37 | 34 | 45 | 49 | 57 |
| California | 157 | 164 | 196 | 222 | 230 | 220 |
| Colorado | 35 | 36 | 44 | 55 | 66 | 77 |
| Idaho | 70 | 65 | 63 | 69 | 68 | 71 |
| Montana | 56 | 46 | 50 | 52 | 53 | 51 |
| Nevada | 2 | 3 | 4 | 4 | 4 | 5 |
| New Mexico | 12 | 12 | 17 | 18 | 20 | 21 |
| Oregon | 46 | 54 | 67 | 73 | 107 | 98 |
| Utah | 10 | 11 | 13 | 18 | 17 | 18 |
| Washington | 85 | 81 | 84 | 85 | 86 | 80 |
| Wyoming | 36 | 29 | 31 | 33 | 37 | 41 |
| Totals | 533 | 538 | 603 | 674 | 737 | 739 |

While one might expect that irrigation districts would primarily be located in rural, sparsely populated areas, *Table 4* below shows that roughly one-half of the districts in Arizona, California, Nevada, Utah, and Washington are located within the Census Bureau's Standard Metropolitan Statistical Areas.[39] Whereas irrigation districts in rural areas may be quite responsive to the preferences of a relatively homogeneous agricultural clientele, the presence of these districts in a complex, interdependent, urban environment poses a number of problems. In their study of special districts in urban areas, the Advisory Committee on Intergovernmental Relations concluded that special districts raise competing demands for local revenue which may be inimical to similar programs.[40]

38. Compiled by the author from 1952-1977 CENSUS OF GOVERNMENT REPORTS.

39. The U.S. Bureau of the Census defines SMSAs as "areas that usually consist of a central city with a population exceeding 50,000, the county(ies) in which it is located and another contiguous counties that are metropolitan in character and are socially and economically integrated with the central city."

40. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *supra* note 25, at 74-75.

> [T]he establishment of special districts creates intergovernmental problems and is frequently an uneconomical means of providing services. Perhaps most important, their use has tended to distort the political processes through which the competing demands for the local revenue dollar are evaluated and balanced . . . The programs of many districts appear to be completely independent from, and uncoordinated with, similar programs of local government.

*Id.*

Table 4: Single Function Irrigation and Water Conservation Districts by Demographic Location in Eleven Western States, 1977.[41]

| State | Inside SMSAs | | Outside SMSAs | | Total |
|---|---|---|---|---|---|
| | % | (N) | % | (N) | (N) |
| Arizona | 50.9 | (29) | 49.1 | (28) | (57) |
| California | 46.4 | (102) | 43.6 | (118) | (220) |
| Colorado | 16.9 | (13) | 83.1 | (64) | (77) |
| Idaho | 5.6 | (4) | 94.4 | (67) | (71) |
| Montana | 9.8 | (5) | 81.2 | (46) | (51) |
| Nevada | 40.0 | (2) | 60.0 | (3) | (5) |
| New Mexico | 4.8 | (1) | 93.2 | (20) | (21) |
| Oregon | 15.3 | (15) | 84.7 | (83) | (98) |
| Utah | 55.6 | (10) | 44.4 | (8) | (18) |
| Washington | 40.0 | (32) | 60.0 | (48) | (80) |
| Wyoming | 0.0 | (0) | 100.0 | (38) | (38) |
| Totals | 28.9 | (213) | 71.1 | (523) | (736) |

The presence of irrigation districts in urbanizing environments indicates that these districts are partially responsible for the political and fiscal problems cited by the Commission. Moreover, the rationale for property qualifications becomes suspect in an environment that contains a panoply of interests. The probablity that nonirrigators will pay a larger portion of district costs greatly increases in the urban setting.[42] District expenditures, for example, may be financed by domestic water and power revenues, and a significant portion of the revenues may come from residents that are ineligible to participate in district elections, e.g., renters who pay water or power bills. In such situations, the rationale for property restrictions directly conflicts with democratic values that underly the extension of the suffrage. Irrigation districts in urban environments thus may encounter opposition from those who feel that property privileges are unjustifiable.

Liberal philosophers have long contended that the protection of the right to own property is a principal objective of government. James Madison, for example, in his defense of the Constitution argued that government was instituted for the protection of both property and individu-

41. Calculated from 1977 CENSUS OF GOVERNMENTS, *supra* note 22, at Table 12.

42. *Cf.* McDowell & Ugone, *The Effect of Institutional Setting on Behavior in Public Enterprises: Irrigation Districts in the Western States*, 1982 ARIZ. ST. L.J. at 492-93. (The authors indicate that the political makeup of a special district impacts its pricing behavior. In particular, districts which provide water and power and which adopt a voting system based on acreage tend to subsidize water operations with electric power revenues.)

als.[43] While Madison may have been disappointed with the removal of property qualifications in state legislative elections, he probably would have approved of the institution of property qualifications in special districts. As guardians of property, it is not surprising to find that special governmental districts often insure that property interests are accorded special status. Trying to extend the suffrage while protecting and serving property, however, often results in bitter conflict. Resolving this conflict provides a challenging task for the judicial system.

## III. PROPERTY QUALIFICATIONS FOR VOTING: TRENDS IN JUDICIAL INTERPRETATION

### *A. Property Qualifications v. the Right to Vote*

Voting first received judicial recognition as a fundamental right in 1886,[44] but the equal protection clause of the fourteenth amendment did not fully emerge as a means to invalidate state voting restrictions until *Baker v. Carr*[45] in 1962. Prior to *Baker*, the Court had upheld most state voting restrictions by ruling that the right to vote was *not* one of the privileges and immunities explicitly protected in the fourteenth amendment;[46] property qualifications, apportionment, and other voting questions were political decisions best decided by state legislatures. Justice Frankfurter, in *Colegrove v. Green*,[47] for example, admonished the federal courts to "stay out of the political thicket of reapportionment."[48]

A similar style of judicial restraint was used in a number of early state court decisions where special districts were exempted from the property qualification prohibitions that exist in many state constitutions.[49] In reviewing election statutes of special governmental districts, state courts generally ruled that the qualifications of district officers and district voters were matters that rested entirely in the discretion of the state legislature

---

43. J. MADISON, NOTES ON THE DEBATES IN THE FEDERAL CONSTITUTION OF 1787 386 (1966).

44. Yick Wo v. Hopkins, 118 U.S. 356 (1886).

45. 369 U.S. 186 (1962).

46. *See, e.g.*, Lassiter v. Northampton County Bd. of Elections, 360 U.S. 45 (1959); Breedlove v. Shuttles, 302 U.S. 277 (1937); Pope v. Williams, 193 U.S. 621 (1904); *see generally* Bloom, *Property Ownership Versus the Right to Vote*, 25 S.W. L.J. 633, 635 (1971).

47. 328 U.S. 549 (1946).

48. *Id.* at 551.

49. *See* Tarpey v. McClure, 190 Cal. 593, 213 P.2d 983, 989 (1923) (holding that the Water Storage District Act which denies to any but landowners the right to vote at district elections did not violate § 22 of Article 1 of the State Constitution which states: "The right to vote or hold office may not be conditioned by a property qualification."); State *ex. rel.* Gibson v. Monahan, 72 Kan. 492, 84 P.2d 130 (1905); Mound City Land and Stock Co. v. Miller, 170 Mo. 240, 70 S.W. 721 (1902).

and which were usually prescribed by the governing statute.[50] These decisions were early indicators that federal equal protection principles may not be applicable to all political subdivisions of the states.

The United States Supreme Court has established two basic tests to evaluate equal protection cases. The "rational basis" test allows a challenged state policy to stand as long as it is not irrational, arbitrary or unreasonable. This test embodies judicial restraint since the burden of proof is borne by the plaintiff; that is, "state legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality."[51] The state must only show "any state of facts [which] reasonably may be conceived to justify [a statutory discrimination]."[52] Not surprisingly, prior to the Warren era the Supreme Court generally deferred to the states in the determination of equal protection cases by employing the rational basis test.

In contrast, the Warren Court actively pursued the protection of civil liberties by developing and then invoking with increasing frequency the strict scrutiny test. Unlike the rational basis test, the plaintiff must first show that a state classification is suspect, i.e., inherently discriminatory or involving the abridgement of fundamental rights. If the Court finds the classification to be suspect, then the state must demonstrate that the classification is necessary to accomplish a compelling state interest.[53] One observer of the Court contends that the compelling state interest criterion was no less than revolutionary since by "compelling," the Court for the first time required that state classifications must be both precisely defined and demonstrably necessary.[54]

Strict federal scrutiny of state election policies increased in a series of Warren Court era apportionment cases. In *Baker*, the Court allowed fed-

---

50. *See, e.g.*, Campbell v. Beaver Bayou Drainage Dist., 215 Ark. 187, 219 S.W.2d 934 (1949), *cert. denied*, 338 U.S. 829 (1949); *see infra* text accompanying notes 98-103.

51. McGowan v. Maryland, 366 U.S. 420, 425 (1961); *see also* Dandridge v. Williams, 397 U.S. 471 (1970); Allied Stores of Ohio, Inc. v. Bowers 358 U.S. 522, 527 (1959).

52. 366 U.S. at 425. The Court upheld numerous state franchise restrictions if the restrictions were reasonably related to a valid state purpose. *See, e.g.*, Lassiter v. Northampton County Bd. of Elections, 360 U.S. 45 (1959) where the Court upheld the use of literacy tests; for an early example, see Gulf C. and S.F. Ry. v. Ellis, 165 U.S. 150, 155 (1897).

53. *See, e.g.*, Shapiro v. Thompson, 394 U.S. 618, 630 (1969).

54. W. ELLIOT, *supra* note 16, at 148-50. Elliot contends the Warren Court was guided by the "Guardian Ethic" which is "a habitual preference of standardized universal claims over special and local ones." *Id.; see also* R. CORTNER, THE SUPREME COURT AND CIVIL LIBERTIES POLICY (1975); A. GINGER, THE LAW, THE SUPREME COURT AND THE PEOPLE'S RIGHTS (1974); A. GOLDBERG, EQUAL JUSTICE: THE WARREN ERA ERA OF THE SUPREME COURT (1971). The Court stated in *Cipriano v. City of Houma*, "infringements [on the right to vote] must be tailored with precision to serve and affect exactly the interest claimed and no other." Cipriano v. City of Houma, 395 U.S. 701, 732-33 (1969) (per curiam).

eral district courts to determine whether malapportionment in the state legislatures deprived voters of equal protection.[55] Two years later, the Court in *Wesberry v. Sanders*[56] clearly stated that one person's vote was to be worth as much in a congressional election as anyone else's.[57] Justice Black asserted that having a voice in who shall govern is the most precious right in a free society.[58] Four months later, the Court continued its assault on state legislatures in *Reynolds v. Sims*[59] where the Court ruled that both houses of state legislatures must follow the one-person, one-vote principle. Warren's opinion concerning the evils of malapportionment reflects the majority's potential opposition to property qualifications:

> Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.[60]

Thus the apportionment decisions of the early 1960s signified the Court's dedication to the protection of voting rights even if the elimination of property qualifications were involved.

In a related case, *Gray v. Sanders*,[61] the Court held that Georgia's county unit system, applicable in statewide primary elections, contravened the equal protection clause.[62] The unit system diluted the weight of the votes of voters in more populous counties. This decision implies that there is a constitutional right to cast a vote that is equal to the vote of any other member of the same constituency. *Gray v. Sanders* and related malapportionment cases, however, involved de facto weighted voting. The dilution of votes was a function of residence rather than of statutory provisions. De facto weighted voting decisions have limited applicability to de jure weighted voting.[63]

In 1965, the Court began to apply the strict scrutiny criteria to state voter classifications. In *Carrington v. Rash*,[64] the Court overturned Texas state residency requirements for military personnel noting that

---

55. 369 U.S. 186, 186 (1962).
56. 376 U.S. 1 (1964).
57. *Id.* at 17-18.
58. *Id.*
59. 380 U.S. 89 (1964).
60. *Id.* at 94.
61. 372 U.S. 368 (1963).
62. *Id.* at 379.
63. L. TRIBE, AMERICAN CONSTITUTIONAL LAW 739 (1978).
64. 380 U.S. 89 (1965).

" '(f)encing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible."[65] One year later, in *Harper v. Virginia Board of Elections*, the Court ruled that state voter classifications based on wealth were a violation of equal protection[66] whenever the affluence of the voter is made an electoral standard. Although this decision concerned the payment of poll taxes, the close relationship of affluence to property ownership is evident.[67]

### *B. Extending Equal Protection to Local Government Elections*

By 1966, property qualifications for voting had been removed in all United States elections except in some county government, municipal bond, and special governmental district elections. In 1968, property qualifications for county elections were expressly disapproved in *Avery v. Midland County Board of Commissioners*.[68] In *Avery*, the Court held that the *Reynolds* one-person, one-vote rule applies to the election of the "general governing body" of a county. First, the Court cited the broad powers that the county officials in question were granted including the setting of tax rates, equalizing of assessments, and preparing and adopting a budget for allocating the county's funds.[69] Second, the Court noted that county governance did not affect definable groups of constituents more than other constituents.[70] These two factors, then, constituted clear standards for the subsequent extension of one-person, one-vote guarantees to political subdivisions of the state, and were first applied in municipal bond elections.[71]

In *Cipriano v. City of Houma*,[72] the Court found that a municipal election to approve the issuance of revenue bonds by a municipal utility could not be limited to property taxpayers. The city of Houma planned to use the proceeds of the bonds to finance the extension and improvement of municipally owned gas, water, and electrical utility systems. Citing *Avery* and *Reynolds*, the Court had no difficulty in finding that the property qualifications were invalid since benefits and burdens were not limited to property owners. All residents of the city would be vitally affected by the

---

65. *Id.* at 94.

66. Harper v. Virginia Bd. of Elections, 383 U.S. 663, 666 (1966).

67. In his dissent, Justice Harlan conceded: "Property qualifications, very simply are not in accord with egalitarian notions of how a modern democracy should be organized." *Id.* at 686.

68. 390 U.S. 474 (1968).

69. *Id.* at 484.

70. *Id.* at 483-84.

71. *See, e.g.*, Hill v. Stone, 421 U.S. 289 (1975); City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970); Cipriano v. City of Houma, 395 U.S. 701 (1969) (per curiam).

72. 395 U.S. 701 (1965).

operation of the utility systems.[73]

One year later, in *City of Phoenix v. Kolodziejski*,[74] the Court held that property qualifications were constitutionally impermissible in municipal general obligation bond referenda. The bond proceeds in *Phoenix* were to be used for municipal improvements including sewers, recreation facilities, libraries, and police and public safety buildings. Although the city argued that property qualifications were justified because the bonds would be primarily repaid through property tax revenues, the Court rejected this argument, pointing out that higher taxes lead to higher rents.[75] The Court also noted that since all residents in the city might have a substantial interest in the public services and facilities to be financed, all residents should be allowed to vote in the bond election.[76] Once again, the Court cited the *Reynolds-Avery* line of reasoning.

### C. *Property Qualifications and Special Districts*

The consequences of these decisions were truly dramatic. At the time *Phoenix* came before the Court in 1970, fourteen states still imposed property qualifications on the franchise in municipal bond elections. Eventually, most municipal and county property restrictions were removed,[77] but the applicability of these cases to special district elections remained unclear. In *Avery*, the Court explicitly deferred judgement of the issues which would be presented by "a special purpose unit of government assigned the performance of functions affecting definable groups of constitutents more than other constituents."[78] Moreover, the Court held that local governments could be flexible in adopting means to face local problems.[79] Elsewhere, the Court seemed to allow more latitude to special districts by holding that it was permissible to have appointed rather than elected directors.[80] Despite these exceptions, the Court began the extension of the *Reynolds* strict scrutiny test to special districts in 1969.

In *Kramer v. Union Free School District*,[81] the Court ruled that the State of New York could not limit the right to vote in school board elections to property owners and/or parents of school children. The chal-

---

73. *Id.* at 705.
74. 399 U.S. at 210.
75. *Id.* at 209.
76. *Id.*
77. *See* Wagar, *The Last Bastion Crumbles: All Property Restrictions on the Franchise are Unconstitutional*, 1 N.M. L. REV. 403, 404 (1971).
78. 390 U.S. at 438-39.
79. *Id.*
80. Sailors v. Board of Educ., 387 U.S. 105 (1967).
81. 395 U.S. 621 (1969).

lenged New York statute was deemed invalid because it failed to sufficiently limit the franchise to those who had a direct interest in school affairs.[82] The *Reynolds* rule was applied to school districts even though these entities have limited and specific governmental powers; i.e., the general governmental requirement stated in *Avery* did not prevent the application of equal protection guarantees in the case of school districts.

The Court went further in *Hadley v. Jr. College District of Metropolitan Kansas City*.[83] In this special governmental district, the governing board also had relatively limited functions and powers. The trustees levied taxes, issued bonds, hired and fired teachers, collected fees, supervised and disciplined students, and acquired property through the power of eminent domain. The Court concluded:

> [T]hese powers, while not fully as broad as those of the Midland County Commissioners [in *Avery*], certainly show that the trustees perform *important governmental functions* within the districts, and we think these powers are *general enough* and have sufficient impact throughout the district to justify the conclusion that the principle which we applied in *Avery* should also be applied here.[84]

The Court further explained that popular elections were required because education was a service that was vital and had traditionally been supplied by government.[85] However, the Court clearly stated that the *Reynolds* rule is not necessarily applicable to all special district elections. In fact, the Court held the strict equal protection requirements may be eased where the governmental activities disproportionately affected different groups.[86] Thus the Court preserved some measure of flexibility in the application of equal protection guarantees to special districts.

The *Avery and Kramer* principles were subsequently applied in a number of non-school special district election cases. In California and New York, state statutes which required ownership of property as a condition to the right to vote for improvement district commissioners were held in violation of the equal protection clause of the fourteenth amendment since the resident non-landowners had as much interest in the affairs of the districts as the landowners.[87] In *Burrey v. Embarcadero Municipal Im-*

---

82. Note that *Kramer* was decided on the same day as *Cipriano*, 395 U.S. 701 (1969), and one year before *Phoenix*, 399 U.S. 204 (1970).

83. 397 U.S. 50 (1970) (Note that this decision was made by the Burger Court).

84. *Id.* at 53-54 (emphasis added).

85. *Id.* at 56.

86. *Id.*

87. Pierce v. Ossining, 292 F. Supp. 113 (1968); Burrey v. Embarcadero Mun. Imp. Dist., 97 Cal. Rptr. 203, 488 P.2d 395, (1971); Lippe v. Jones, 32 A.D.2d 843, 300 N.Y.S.2d 396 (1969).

*provement District*,[88] the district in question provided a wide range of services. By California statute, municipal improvement districts may provide the major services and utilities that cities normally supply their residents.[89] The California Supreme Court concluded: "[I]t is apparent that [the improvement district's] powers within the geographic area controlled by it exceed in potential impact and pervasiveness the powers exercised by the junior college district in *Hadley*, and, in fact, come close to those exercised by the county commissioners in *Avery*."[90] Moreover, the provision of utility services by these districts led both New York and California courts to cite the relevance of *Cipriano* and *Phoenix*.[91]

The *Avery* and *Kramer* criteria have been applied to sanitary district elections,[92] county water improvement district elections,[93] and a formation election for a municipal water district.[94] These cases are significant in that the districts provided a narrower range of services than either municipalities or municipal improvement districts. For example, New York's sanitary districts are limited to the provision of sewer and related public health facilities and services.[95] On the other hand, these districts were largely limited to the provision of municipal services. The application of equal protection to irrigation districts and other limited districts designed to serve rural lands therefore was not mandated by these decisions.

### *D. The Exemption of Irrigation Districts From Equal Protection Guarantees*

Developing the exceptions in *Avery* and *Hadley* rather than the rule in *Reynolds*, the Court in *Salyer v. Tulare Lake Water Storage District*,[96] reasserted the privilege view of voting that had been disfavored during the Warren Court era. The majority opinion rendered by Justice Rehnquist and the dissenting opinion filed by Justice Douglas are indicative of the

---

88. 97 Cal. Rptr. 203, 488 P.2d 395 (1971).

89. Act of May 11, 1960, ch. 81, §§ 75-99, 1961 Cal. Stat. 1st Ex. Sess. 1960, 441, 447-49, enables municipal improvement districts to construct and maintain street lighting and facilities for sewage and garbage disposal, drainage, reclamation, and water treatment and distribution, *id.* § 77; districts may establish and maintain a fire department and police services, *id.* § 97; compel residents to use sewer and garbage services, *Id.* § 98; and charge residents for all services and facilities served, *id.* § 99.

90. 97 Cal. Rptr. at 203, 488 P.2d at 395.

91. Burrey v. Embarcadero Mun. Imp. Dist., 97 Cal. Rptr. at 209-11, 488 P.2d at 401-02.

92. Romano v. Redman, 60 Misc. 2d 859 304, N.Y.S.2d 261 (1969).

93. Fonseca v. Hidalgo County Water Imp. Dist. #2, 496 F.2d 109 (5th Cir. 1974).

94. Wright v. Town Bd. of Carlton, 41 A.D.2d 290, 342 N.Y.S.2d 577 (1973).

95. N.Y. TOWN LAW § 198 (Consol. 1980).

96. 410 U.S. 719 (1973); *see also* Associated Enterprises v. Toltec Watershed Imp. Dist., 410 U.S. 743 (1973) (per curiam) which was decided the same day.

change in the Court. *Salyer* involved a California statute which limited the right to vote in water storage district elections to landowners, including corporations, and weighted the vote according to the assessed valuation of the land. The District provided no other general public services such as schools, utilities, or roads. The District's powers and function, in fact, were strictly limited to agricultural water projects and services, except for some flood control activities.

Rehnquist noted that the activities of the Tulare District impacted so disproportionately on landowners that it was not unreasonable to focus on the land benefited.[97] In reference to the weighted voting provisions of the District, Rehnquist contended: "Weighting the vote according to assessed valuation of the land does not evade the principle that wealth has no relation to voter qualifications where, as here, the expense as well as the benefit is proportional to the land's assessed valuation."[98] In Rehnquist's view, then, the Tulare District was eligible for the *Hadley* and *Avery* exemptions by reason of its limited purpose and the disproportionate effect of its activities on landowners.

Justice Douglas in dissent contended that the duties and services offered by the District did indeed constitute a vital and important governmental activity. Citing *Kramer*, he further stated that restrictions on voting must always be disfavored as they pose the danger of denying citizens a voice in affairs which may affect their lives.[99] In Douglas's view, the provisions were not precisely tailored to those affected, the *Kramer* criterion, because the management of flood control in the *Salyer* case involved the entire community:

> As a nonlandowning bachelor was held to be entitled to vote on matters affecting education, *Kramer v. Union Free School District, supra,* so all the prospective victims of mismanaged flood control projects should be entitled to vote in water district elections, whether they be resident nonlandowners, resident or non-resident lessees, and whether they own 10 acres or 10,000 acres. Moreover, their votes should be equal regardless of the value of their holdings, for when it comes to the performance of governmental functions, all enter the polls on an equal basis.[100]

Douglas also noted that water storage districts (and indeed all water districts in California) are considered exclusively governmental both legislatively and according to court interpretation. Additionally, Douglas cites

97. 410 U.S. at 732.
98. *Id.* at 735.
99. *Id.*
100. *Id.*

the various powers that these districts possess: eminent domain, tax-free construction and debt privileges, and governmental immunity against suit.[101] To these can be added the powers to annex and detach land parcels, create improvement districts, provide recreatonal facilities, enter into agreements with other agencies, and levy a number of different kinds of taxes.[102]

The *Salyer* majority refused to apply the strict scrutiny demanded by Douglas to California's water storage districts principally because district elections did not appear to involve the selection of governmental officials or the exercise of governmental functions and powers. The Court defined government in a narrow sense as those functions traditionally performed by government rather than those functions that have or could have been performed by government. In *Salyer*, the Court held that the Tulare District was not truly governmental since operations of the district were limited to proprietary activities like irrigation and flood control that primarily affected the land and only incidentally affected non-landowning residents. Rather than determining whether the District's property qualifications were necessary to serve a compelling state interest, then, the Court restricted its review to the rational basis standard. Consequently, the Court found the state statute in *Salyer* to be a rational means to accomplish the objective of reclaiming arid lands.[103]

The *Salyer* decision is reminiscent of state court decisions early in this century which exempted special districts from state voting requirements.[104] In *Schindler v. Palo Verde Irrigation District*,[105] however, a California Court of Appeals anticipated *Salyer*, and held that limiting the franchise to landowners was justified since both costs and benefits were to be borne by landowners, and since the district was limited in purpose to irrigation and reclamation.[106] Not surprisingly, *Salyer* has been cited as justification for upholding property qualifications in a reclamation district,[107] a tunnel improvement district,[108] a watershed improvement dis-

---

101. *Id.* at 736.

102. CAL. WATER CODE, §§ 34000-38500 (West 1956).

103. 410 U.S. at 734-35. *See generally* Garton, *One Person, One Vote in Special District Elections: Two Ideas and An Illustration*, 20 S.D. L. REV. 245-64 (1975).

104. *See* McDowell & Ugone, *supra* note 42.

105. 1 Cal. App. 3d 831, 82 Cal. Rptr. 61 (1969).

106. *Id.*

107. Phillipart v. Hotchkiss Tract Reclamation Dist. 799, 54 Cal. App. 3d 797, 127 Cal. Rptr. 42 (1975).

108. Chesser v. Buchanan, 568 P.2d. 39 (Colo. 1977) (holding the requirement that residents of a tunnel improvement district have paid real property taxes before they could vote for district commissioners neither violated Colorado election code nor constituted unconstitutional denial of equal protection).

trict,[109] and a recreation and parks district.[110] In each case, the special district governments involved were found to be sufficiently limited in powers and impact to invoke the *Salyer* exeption.

In contrast to these cases, however, property qualifications were invalidated for holding office and voting in two state cases involving irrigation districts. In *Choudhry v. Free,*[111] the California Supreme Court held that the Imperial Irrigation District's requirement that candidates for director own real property deprived both candidates and voters of equal protection of the laws in violation of the United States and California Constitutions.[112] The court explicitly distinguished a number of differences between the Tulare District and the Imperial District. First, the court found the statutory authority of irrigation districts more extensive, and hence more governmental, than water storage districts.[113] Second, the court also found the revenue raising powers different from *Salyer* because irrigation districts can levy a service charge to landowners and non-landowners in lieu or in addition to property assessments.[114] Third, the court found the most significant differences between the Tulare and Imperial Districts in population served. For example, while Tulare served seventy-seven persons, the Imperial Irrigation District included over 100,000 urban residents. Unlike *Salyer,* the court was unable to conclude non-landowning residents were significantly less interested than landowners in the operation of the district.[115]

Citing *Choudhry* and *Phoenix,* the Idaho Supreme Court also found *Salyer* inapplicable in *Johnson v. Lewiston Orchards Irrigation District.*[116] The court noted that the Lewiston District was authorized to operate and maintain a garbage disposal program for residents in addition to its water related services. In addition, the District was located almost

---

109. Associated Enters. v. Toltec Watershed Imp. Dist., 410 U.S. 743 (1973).

110. Simi Valley Parks and Recreation Dist. v. LAFCO of Ventura County, 51 Cal. App. 3d 648, 124 Cal. Rptr. 635 (1975).

111. 552 P.2d 438 (1976).

112. *Id.*

113. *Id.* at 443.

> The basic function of a water storage district is to acquire, store and distribute water for farming. In connection with this primary purpose, the district may acquire and operate works for the generation of hydroelectric power as well as for the distribution of power, and engage in flood control activities. An irrigation district, by contrast, may produce or purchase electric power and operate flood control *without regard to whether such functions are ancillary to irrigation* and, in addition, it may operate sewage disposal works and recreational facilities in connection with property under its control . . . .

*Id.*

114. *Id.*

115. *Id.*

116. 584 P.2d 646 (1978).

entirely within the city limits of Lewiston, Idaho, sixty-six percent of the District's revenues were derived from domestic water sales, and the District owned a public park and swimming pool.[117] Even though the District had not actually provided garbage disposal services nor did it directly operate the pool and park, the court found that the landowners only voting limitation violated the equal protection clause of the Constitution.[118]

*Salyer*, then, did not resolve the constitutionality of property qualifications for voting and holding office in irrigation districts. *Salyer* and its progeny suggested that property qualifications were exempt when the district allocated costs and benefits exclusively to landowners. Both *Choudhry* and *Johnson* would limit *Salyer* to rural, sparsely populated areas where district policies do not appreciably affect non-landowning residents. In both *Choudhry* and *Johnson*, the courts refused to extend their rulings to all irrigation districts in their respective states.[119] A common theme prevails in all of these cases. Statutory provisions alone do not provide sufficient justification for applying the *Reynolds* one-person, one-vote standard. The actual circumstances of district operations must also be closely examined. Thus, the stage was set for the Supreme Court to elaborate on the applicability of *Salyer* in differing environments, an opportunity presented by *Ball v. James*.

## IV. THE CONSTITUTIONALITY OF PROPERTY QUALIFICATIONS IN THE SALT RIVER DISTRICT

Given the limited nature of the *Salyer* exception, it seemed quite unlikely that it would be applied to the Salt River District. As one of the nation's largest special governmental districts serving an extremely large diverse population, the District appears to be much more similar to the Imperial Irrigation District than to the Tulare District. Both the Imperial and Salt River Districts provide water and electricity to thousands of urban residents in addition to their traditional irrigation activities.[120] In con-

---

117. *Id.* at 647-48.

118. *Id.*

119. In *Choudhry*, the Court stated: "[W]e do not reach the remaining question: whether Section 21100 also violates Section 22 of article 1 of the California Constitution, which provides, 'The right to vote or hold office may not be conditioned by a property qualification.' " 552 P.2d 438, 444; in *Johnson*, the Court stated: "However, we emphasize that we do not reach the question whether Art. 1 § 20, of the Idaho Constitution and I.C. § 43-111 are unconstitutional as applied to all irrigation districts within the state." 584 P.2d 646, 650.

120. Differences between these two districts do exist. The Salt River District is a wholesaler of water; it delivers untreated water to cities within the District based on entitlement. In contrast, the Imperial District actually allocates water between agricultural and non-agricultural uses. In addition, the Imperial District has wide ranging statutory purposes not shared by the Salt River District. For example, the Imperial District may provide sewage disposal, water treatment, and recreation services.

trast, the district in *Salyer* was relatively small, and neither provided services to an urban population nor engaged in electrical power activities. Nevertheless, the Court held that the Salt River District, like the Tulare District in *Salyer*, was not subject to equal protection guarantees. In evaluating the Court's decision, three questions must be answered. First, to what extent are the functions of the Salt River District governmental? Second, do District policies actually affect landowners disproportionately more than non-landowning residents? Third, has the Court clearly resolved the ambiguity surrounding the constitutionality of property qualifications in irrigation districts?

In *Ball*, the Court first concluded that the Salt River District did not possess sufficiently general governmental powers to justify application of the *Avery* rule.[121] The *Cipriano* and *Phoenix* cases were held inapplicable because they involved municipalities whereas the Salt River District did not provide the full range of services typically provided by municipalities.[122] The logic of the Court is hard to follow when one remembers that *Cipriano* involved a municipal revenue bond election to finance gas, water, and electric utility systems. The Salt River District provides essential electrical energy and water services in substantial portions of the Salt River Valley. Moreover, the District has financed its recent utility operations almost entirely through revenue bonds.[123] Although the Court in *Cipriano* concluded that all residents would be vitally affected by the operation of the utility system, the majority in *Ball* refused to follow this precedent.

The Arizona State Constitution states that agricultural improvement districts "shall be political subdivisions of the state, and vested with all rights, privileges, and benefits and entitled to the immunities and exemp-

---

*See* Appellants' Reply Brief at 13 n.22, Ball v. James, 451 U.S. 355 (1981).

121. 451 U.S. at 366. "The District cannot impose ad valorem property taxes or sales taxes. It cannot enact any laws governing the conduct of citizens, nor does it administer such normal functions of government as the maintenance of streets, the operation of schools, or sanitation, health or welfare services." *Id.* The Salt River District may levy acreage assessments under ARIZ. REV. STAT. ANN. §§ 45-1011 to -1023 (1980). Thus far this power has not had to be used. Whether there is an actual, significant difference between acreage assessments and ad valorem taxes is a question that remains.

122. 451 U.S. at 356 n.11, but White's dissent rejects this argument:

> Nothing in *Cipriano* turned on the fact that the city's utility activities were connected with its broader grants of police power and were not conducted by a separately elected board or commission. While the court noted that any profits from the utility operations would go into the city's general fund, this fact did not contribute to the Court's decision to extend the franchise. Rather, the Court noted that property and nonproperty taxpayers may have different views concerning provision of city funds for utilities, and that it was this concern with the utility services which required application of *Kramer*.

*Id.* at 385 n.9.

123. Stipulated Statement of Facts, *supra* note 10, at 36, Exhibit K.

tions granted municipalities and political subdivisions under this Constitution or any law of the State or of the United States."[124] Arizona statutes further elaborate:

> An agricultural improvement district . . . is a public, political taxing subdivision of the state, and a municipal corporation to the extent of the powers and privileges conferred by this chapter or granted generally to municipal corporation by the constitution and statutes of the state, including immunity of its property and bonds bonds from taxation.[125]

In addition to a tax exemption, the statutes grant these districts a number of powers commonly associated with governments, including the right of eminent domain and condemnation of private property,[126] plenary and exclusive authority to direct District operations and affairs,[127] and the power to raise revenues through the levy of property assessments, the sale of water and power, and the incurrence of bonded indebtedness.[128] However, these legislative grants of governmental status have not prevented Arizona courts from characterizing the Salt River District as a business corporation[129] engaged in strictly proprietary functions.[130] In a case involving the Roosevelt Irrigation District, an Arizona court had held that the characteristics of sovereignty possessed by such districts are incidental and are only conferred to allow them to function better as a business.[131] The majority in *Ball* adopted this characterization and described the District's relationship with its non-voting residents as one between a business and its customers.[132]

Justice Powell's concurrence emphasized that the District's primary functions, the storage and delivery of water, were not the type of vital, important governmental functions that necessitated the application of the *Kramer-Hadley* principles:

> Powers exercised by the Salt River District are not powers that al-

---

124. ARIZ. CONST. art. XIII, § 7.

125. ARIZ. REV. STAT. ANN. § 45-902 (1956).

126. *Id.* at § 45-939.

127. *Id.* at §§ 45-935 to -937.

128. *Id.* at §§ 40-1011 to -1023 (Supp. 1981-1982).

129. Local 266. IBEW v. Salt River Project Ag. Imp. & Power Dist., 78 Ariz. 30, 40, 275 P.2d 393, 400 (1954) (holding district employees are not public employees prohibited from striking).

130. Neidner v. Salt River Project Ag. Imp. & Power Dist., 121 Ariz. 331, 590 P.2d 447 (1979) (holding no "state action" when a district discharges an employee without notice or opportunity for a hearing).

131. Taylor v. Roosevelt Irr. Dist., 71 Ariz. 254, 226 P.2d 154 *on reh'g*, 72 Ariz. 160, 164, 232 P.2d 107, 110 (1951).

132. 451 U.S. at 370, *but see infra* text accompanying notes 151-60.

> ways must be exercised by a popularly elected body . . . Both storage and delivery of water are functions that in other areas of the Nation are performed by private or administrative bodies. The aridity of the Southwest, Federal water policy, and the historical interest of Arizona landowners in irrigation have resulted in these tasks sometimes being performed by a government entity, not their inherent nor an insistent demand that the people as a whole decide how much water each will receive or how much each will pay for electricity.[133]

An obvious problem with this argument is that education, too, is often provided by private entities. Does this mean that the provision of education is not inherently governmental? If so, then what about the *Kramer* precedent? Justice Powell partially answers: "The holding in *Kramer* is affected neither by *Salyer* nor by the [*Ball*] decision . . . but it must be evident that some of the reasoning of that case has been questioned."[134] In *Hadley* the Court explained that education was governmental because of its traditional importance.[135] It might be argued that irrigation water in the West has also been traditionally accorded governmental attention due to its inherent scarcity.[136] As early as 1896, in fact, the United States Supreme Court held that irrigation in the West serves a public purpose.[137] The Court's rejection of the *Kramer-Hadley* principles, then, is difficult to reconcile with this precedent and with the history of western water development.

Determining the extent to which irrigation districts are governmental is a difficult task. The heart of the problem is that public irrigation districts often retain the private attributes of their predecessors. The Salt River District provides a clear example. In 1903, the Salt River Valley Water Users' Association was organized as a private corporation in order to represent landowners interested in irrigation.[138] The Articles of the Association were written in collaboration with the United States Reclamation Service since the federal government encouraged formation of a contrasting entity for repayment of the Salt River Project.[139] Until 1917, the irrigation system for the lands of the Association's shareholders was in fact

---

133. *Id.* at 373.

134. *Id.* at 373 n.2.

135. *See supra* text accompanying notes 76-79.

136. *See, e.g.*, 1 S. WIEL, WATER RIGHTS IN THE WESTERN STATES (3d ed. 1911).

137. Fallbrook Irr. Dist. v. Bradley, 164 U.S. 112 (1896) (taxing to raise funds for irrigation was clearly public purpose in an arid state where prosperity depended to a very large extent on bringing under cultivation land which was otherwise unproductive). *See also* Comment, *supra* note 32, at 389-91.

138. Stipulated Statement of Facts, *supra* note 10, at 26.

139. *Id.*

operated by the Reclamation Service.[140] From 1917 until 1937, the Association directly maintained, operated, and managed the Salt River Project. Financing for the expansion of the water and power system was obtained through the sale of corporate bonds. Financing difficulties during the Great Depression, though, attracted the Association to the relatively less expensive financing mechanism provided to public irrigation districts under Arizona's Argicultural Improvement District Act.[141]

Many shareholders of the Association, however, opposed the formation of a district because district formation would change the Association's method of voting and taxation. The Association then requested and received amendments to the Agricultural Improvement District Act so that the Association and District voting and taxing provisions became identical.[142] In 1937, the Association transferred all of its property to the newly created Salt River Project Agricultural Improvement and Power District. The Association agreed to continue operating the Salt River Project while the District agreed to provide capital and operating funds to the Association. Following amendments in 1946 and 1949, the District assumed the operation of the Association's power functions while the Association continued to operate the water delivery system as an agent for the District.[143] The private Association and the public District share identical boundaries, electoral divisions, constituencies, and purposes. Moreover, the two entities have had the same management staff since 1949.[144] Thus, the complex financial and legal relationships that have evolved between the Association and the District inhibit a clear determination of the District's governmental status.

The Court had no trouble finding, however, that the District's provision

---

140. *Id.* at 31-32.

141. *Id.* at 25.

142. *Id.* at 26-27. The Agricultural Improvement District Act, ch. 23, 1922 Ariz. Sess. Laws 59, allowed creation of districts to be governed by three or five member boards. *Id.* § 5, 1922 Ariz. Sess. Laws 59, 63. Such districts could be formed only within federal reclamation projects. *Id.* at § 1, 1922 Ariz. Sess. Laws 59-61. All landowners were entitled to one vote each in the elections of such districts. *Id.* § 7, 1922 Ariz. Sess. Laws 59, 63. Such districts enjoyed an ad valorem taxing power on real property within the district. *Id.* § 32, 1922 Ariz. Sess. Laws 59, 77.

In 1936 the Legislature made several amendments to the act. All landowners were entitled to one vote for each acre owned and a one acre minimum was established. Act of Nov. 27, 1936, ch. 10, § 4, 1936 Ariz. Sess. Laws 1st Sp. Sess. 29, 35 (current version at ARIZ. REV. STAT. ANN. § 45-983 (Supp. 1981-1982)). This voting structure now paralleled the Association's. The acreage taxing power of Agricultural Improvements Districts was altered to reflect the amount of water used. *Id.* § 11, 1936 Ariz. Sess. Laws 1st Sp. Sess. 29, 45 (current version at ARIZ. REV. STAT. ANN. § 45-1014 (1956)). This amendment made the taxing power identical to the Association's assessment power.

143. Stipulated Statement of Facts, *supra* note 10, at 28.

144. *Id.* at 30.

of electricity, like that in *Jackson v. Metropolitan Edison Co.*,[145] was not a traditional element of governmental sovereignty.[146] Moreover, the Court held that the District's power operations were incidental to the primary water functions. The Court then explained that since all water entitlements derive from land ownership, the constitutionally relevant fact is that all water in both the Tulare and Salt River Districts is distributed according to land ownership. Therefore, despite the "nominal public character" of these districts, the Salt River District like the Tulare District is essentially a business enterprise, created by and chiefly benefitting a specific group of landowners.[147] In the Court's view, the limited proprietary character of the District justifies the application of the *Salyer* principle.

A second question raised by the Court's decision concerns the relative impacts of the District policies on landowning and non-landowning residents. Since District formation in 1937, land tenure and water use patterns have dramatically changed in the Salt River Valley. Whereas 94.4% of the District land was used for agriculture in 1937, only about 53% of the land remains agricultural today. Conversely, urban land uses have increased during the same period from 5.6% to about 47%.[148] Water use has similarly changed. In 1974, for example, 37.4% of the water went to non-agricultural users.[149] The District's power functions, too, have dramatically increased; approximately 90% of the District's 240,000 electric consumers are residential customers.[150] The projected growth of the Phoenix metropolitan area portends the continuation of these trends in land and water use patterns. It is therefore hard to conclude that District activities affect landowners more than non-landowning residents.

A closer look at the distribution of District benefits and costs, in fact, indicates that electrical consumers rather than landowners pay for most District costs. During 1974, for example, revenues from the sale of electricity accounted for 98% of total District revenues. Moreover, during the last ten years, about 83% of the District's water system costs have been financed with power revenues.[151] The District has therefore never had to impose an acreage tax even though by statute it has the power to do so.[152] In addition to residential power revenues, District costs have been subsidized by a number of interest-free federal loans. One indicator of the ben-

145. 419 U.S. 345 (1974).
146. 451 U.S. at 368.
147. *Id.* at 366-67.
148. Stipulated Statement of Facts, *supra* note 10, at 33.
149. *Id.*
150. *Id.* at 36.
151. *Id.*
152. *Id.* at 35. *See also* 451 U.S. at 366 n.11.

efits that accrue to agricultural interests is the assessed valuation of agricultural lands within the District. District farm lands assessments are generally twice as large as comparable lands outside the boundaries of the District.[153] Agricultural users are also benefited by relatively inexpensive water. The average cost for five acre-feet of water in 1974 was only $22.50. The full cost of the same amount of water is estimated to be $101.50 without subsidies.[154]

As noted above, the voting system of the Salt River District is acreage-based. Non-landowners are ineligible to vote and owners of small parcels, e.g., homeowners, have relatively less voting power than large landowners, e.g., farmers. The exclusion of some District residents and the weighting of votes was challenged by the plaintiffs in *Ball* primarily because many of those residents who financed the District through payment of water and electrical service charges were not allowed or encouraged to participate in District affairs.[155] The Court responded in a number of ways. Justice Stewart writing for the majority and Justice Powell in a concurring opinion reasoned that disenfranchised voters can influence district policies—albeit indirectly—through their popularly elected state legislature.[156] After noting that the legislature had in fact recently demonstrated its control over the District by revising the composition of the governing board,[157] Powell concluded that changes in the District are basically political decisions.[158] Powell's argument is reminiscent of Frankfurter's decision to "stay out of the political thicket" of state politics. Powell further contends state legislatures are better qualified than federal courts to allocate political power, and that the reapportionment of state legislatures—which was effected, ironically, by Warren Era interventions—has enabled the responsive democratic control by these bodies over potentially

153. Stipulated Statement of Facts, *supra* note 10, at 39. *See generally* C. SMITH, THE SALT RIVER PROJECT: A CASE STUDY IN CULTURAL ADAPTATION TO AN URBANIZING COMMUNITY (1972).

154. Stipulated Statement of Facts, *supra* note 10, at 49.

155. 451 U.S. at 355.

156. *Id.* at 371, 374. *But see, id.* at 380 (White, J., dissenting).

157. The Legislature had made the following changes: The method of electing the Board of Directors has departed somewhat from the strict one-acre, one-vote system originally used by the Association and the District. In 1969 the state Legislature amended the Agricultural Improvement Act to permit owners of less than one acre to cast fractional votes in proportion to their acreage. ARIZ. REV. STAT. ANN. § 45-983C (Supp. 1980-1981). A second change had to do with the membership of the Board of Directors itself. Before 1976, there were 10 directors, each elected from a designated geographical part of the District. In 1976, after the district court had dismissed the complaint in this case, the state Legislature enlarged the Board to 14 members and provided that the four new members were to be elected at large, with each landowner in the District having one vote in the at-large election. *Id.* at §§ 45-961B, 45-963 (Supp. 1980-1981). Each special water district also has a President and Vice-President, elected at large on an acreage-weighted basis. *Id.* at § 45-963.

158. 451 U.S. at 374.

undemocratic political subdivisions.[159] The implications of Powell's argument are especially noteworthy because recourse to state legislative control was a remedy specifically rejected in *Avery* and *Kramer*.[160] More generally, since all political subdivisions of the states are subject to legislative control, then future challenges to voter restrictions might be summarily dismissed in a similar manner. On the other hand, the Court's decision may persuade disenfranchised voters and special governmental district reformers to seek legislative rather than judicial solutions.

In many ways, the Salt River District is similar to an investor-owned utility. The District, in fact, argued that in its creation and in its need for funds, the District is no different than any other investor-owned utility or profit-motivated enterprise.[161] If one accepts the District contention that it is like any other utility or corporation, then one might ask why the District is not subject to regulation by the Arizona Corporation Commission.[162] The plaintiffs had argued that the District has broad discretion to exercise its powers and no method of judicial review of District activities existed.[163] The District responded by noting that the District's electric rates have always been competitive or lower than those of regulated utilities which, according to the District, indicated that they need not be regulated.[164]

But this response misses the point. The District confuses past performance with conferred powers. The fact is the District has the authority to set rates as it sees fit. Moreover, the District is granted more discretion than are regulated utilities in the determination of rates of return and capital accumulation.[165] Justice White in dissent notes that utility rates might even be lower had the District decided not to subsidize the cost of water.[166] In any event, few safeguards exist to insure that District utility service is fair and non-discriminatory. The absence of direct regulation of utility services provided by the Salt River District remains a serious potential if not actual problem.

---

159. *Id.*

160. Avery v. Midland County Bd. of Comm'r, 390 U.S. at 481; Kramer v. Union Free School Dist. 395 U.S. at 628 n.10; *see also* Ball v. James, 451 U.S. 388 n.11 (White, Jr., dissenting).

161. Appellants' Reply Brief at 7, Ball v. James, 451 U.S. 355 (1981).

162. *See* ARIZ. CONST. art. XIII, § 7, art. XV, § 2; *see also* Rubenstein Construction Co. v. Salt River Project Ag. Imp. & Power Dist., 76 Ariz. 402, 265 P.2d 455 (1953) (Salt River Project is not a public service corporation and therefore statute forbidding certain business practices did not apply); Leshy, *supra* note 29, at n.53.

163. Appellee's Brief at 9, Ball v. James, 451 U.S. 355 (1981).

164. Appellants' Reply Brief at 17 n.26, Ball v. James, 451 U.S. 355 (1981).

165. *See* C. CORKER, GROUNDWATER LAW AND MANAGEMENT AND ADMINISTRATION 247-55 (Background Study No. 6 for U.S. National Water Commission, 1971).

166. 451 U.S. at 384 n.8.

Justice White's dissent strongly attacks the reasoning of the Court. Most importantly, White rejects the relevance of *Salyer:*

> To conclude that the effect of the District's operations in [the Ball] case is substantially akin to that in *Salyer* ignores reality . . . . The relationship between the burdens of the [*Salyer*] District and the land within the District's boundaries was strong. Here, the District encompasses one of the largest metropolitan areas of the country . . . . There is no strong relationship between the District's operation and the land *qua* land. The District's revenues and bonds are tied directly to the electrical operation. Any encumbrance of the land is at best speculative.[167]

Not surprisingly, White cites the relevance of *Choudhry* and *Johnson,* noting that these cases correctly interpreted *Salyer* by giving it a narrow, limited reading.[168] In White's view, then, the actual circumstances and impact of the Salt River District's activities necessitated the application of strict scrutiny:

> This is not a single purpose water irrigation district, but a large and vital municipal corporation exercising a broad range of initiatives across a spectrum of operations. Moreover, by the nature of the state law, it is presently exercising that authority without direct regulation by state authorities charged with supervising privately owned corporations involved in the same business. The functions and purposes of the Salt River District represent important governmental responsibilities that distinguish the case from Salyer.[169]

## V. ANALYSIS OF *Ball v. James*

White's dissent is well-founded. Strict scrutiny would make the *Kramer-Cipriano-Hadley* line of cases applicable. In these cases as well as in *Salyer,* a simple rule has persevered: affected groups must be enfranchised. The Court in *Ball* has chosen to deny this precedent. In *Salyer* and *Cipriano,* the Court emphasized the actual impacts of district activities rather than the district's statutory capabilities. But in *Ball,* the Court deprecates the significance of District activities while emphasizing the limited, proprietary nature of District statutory powers. Both *Ball* and *Salyer,* though, achieve the same results: property qualifications have been upheld and the status quo maintained.

Unfortunately, the Court's reasoning is neither consistent nor ade-

---

167. 451 U.S. at 385.
168. *Id.* at n.9.
169. *Id.* at 381.

quately explained. The Court has failed to draw a bright, clear line that determines the limits of applying equal protection guarantees to irrigation district elections. Prior to *Ball*, irrigation district litigation suggested that property qualifications were legitimate in rural, homogeneous settings. Conversely, irrigation districts in urban communities were generally forced to remove property qualifications in response to demands by nonlandowning residents affected by district activities. The underlying rationale for these decisions was clearly expressed in *Reynolds* when the Court recognized that as society changes from rural to urban, representation schemes that were once fair may not be any longer.[170] Although the environment of the Salt River District has changed drastically in the last forty years, the Court has refused to change the District's system of representation. By its strict reading of the District's primary purpose, the Court in *Ball* has failed to recognize that a special governmental district designed to subsidize a narrow band of parochial interests may be inappropriate in a complex, interdependent environment. The Court has therefore exacerbated rather than helped solve the problems associated with special district governance in urbanizing areas.

Finally, the Court has not resolved a number of other questions of governance by special district. The constitutionality of weighted voting systems remains unclear. In deference to state legislatures, Powell concludes that Arizona could use land-weighted voting as it reflects the relevant risks of land ownership.[171] Powell's argument is not convincing. In earlier cases, the Court had clearly established the necessity for equality in voting. In *Gray*, for example, the Court stated that "once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting can be evaded."[172]

If one accepts the Court's conclusion that property qualifications in the Salt River District are valid, the contention that the number of acres reasonably reflects one's interest in District activities remains questionable. In the Salt River District, it *was* rational at one time to assume that large landowners would undoubtedly have a substantial interest in District activities when all landowners desired reclamation and when all financial burdens were assessed in direct proportion to land ownership. But today, a panoply of interests exists in the District. A homeowner or small land-

---

170. 377 U.S. at 567.

171. 451 U.S. at 371.

172. 373 U.S. at 381; *but see* Dusch v. Davis, 387 U.S. 112 (1966) (holding an otherwise nondiscriminatory voting plan is not invalid because it uses boroughs as the basis of residence for candidates, not for voting or representation, since each councilman represents the city as a whole and not just the borough where he resides); *see also* Marovsek, Orr v. Kneip: *Defining the Limits of "One Person, One Vote" in the Oahe Conservancy Subdistrict*, 25 S.D. L. REV. 597 (1980).

owner might rationally prefer lower power rates in exchange for higher irrigation water rates. Farmers and ranchers in contrast might prefer to subsidize water costs with power revenues. The acreage based voting system insures that the interests of one class of landowners, homeowners, will be subservient to the different interests of another class of landowners, farmers, and ranchers.

Even in rural irrigation districts with a single function, weighted voting is problematic. Allocating votes in direct proportion to property is based on absolute rather than relative estimates of each landowner's stake in the community. The assumption is that economic investment measures one's interest. However, the farmer of ten acres may be roughly equal to the farmer of 100 acres in relative economic investment. In fact, the small farmer might invest a larger proportion of his wealth than the large farmer due to economies of scale and opportunities for diversification. Consequently, two relatively equal farmers are denied voting equality when weighted voting is employed. Second, institutionalizing inequities in property ownership increases the chances for monopolization of district policies by a minority of landowners who have gained control of a majority of the property.[173] In this case, a system designed to protect property may result in decreased protection for the majority of property owners. Allocating political power according to property ownership is a timeless idea, but institutionalizing weighted voting schemes was traditionally opposed by many political theorists.[174] While it may be rational and equitable to limit political participation in certain situations, i.e., when only landowners are affected, weighted voting is inappropriate in political and economic arrrangements where the consumption of costs and benefits is involuntary. The provision of water services in an arid environment constitutes such a situation.

In *Salyer*, weighted voting was deemed appropriate primarily because all costs were allocated to voters in direct proportion to benefits received.[175] In *Ball*, the Court has upheld the weighted voting scheme of the

---

173. *See supra* text accompanying notes 32-34.

174. Classical Republicans from James Harrington to John Adams had argued that political authority should be somehow related to property ownership. *See* J. POCOCK, THE MACHIAVELLIAN MOMENT 387-90 (1975). Harrington concluded that property ownership is no less than an objective measure of freedom. J. HARRINGTON, *Oceana*, in THE OCEANA AND OTHER WORKS OF JAMES HARRINGTON 178-80 (J. Toland ed. 1971). But Harrington also argued that stability and harmony are a function of the relatively equal distribution of land ownership. *Id.* This theme is echoed by Thomas Jefferson and John Taylor in their vision of agrarian democracy. *See* R. HOFSTADTER, THE AMERICAN POLITICAL TRADITION 22-55 (1967). Harrington explicitly opposed weighted voting systems since weighted votes led to entrenchment of the ruling elite. Entrenchment in turn inevitably led to conflict or corruption. J. HARRINGTON, *supra* at 390-95.

175. *See supra* text accompanying notes 89-91.

Salt River District even though costs are not proportionate to benefits. The clear implication for irrigation districts that weight votes is that the courts will be less likely to subject such systems to strict scrutiny and hence, they will be less likely to require the extension of the one-person, one-vote criterion. This is not to say, however, that weighted voting systems will be immune from challenges by disenfranchised residents and by voters whose votes have been diluted. When weighted voting districts engage in policies unacceptable to these groups, it is probable that the voting system will be challenged. Weighted voting special districts therefore will continue to be subject to close public, if not judicial, scrutiny.

## VI. CONCLUSION

Thirteen years ago, an author in this journal predicted:

> Much of the uncertainty and conjecture regarding the applicability of equal protection standards to special districts have been removed by the Supreme Court's recent expression in *Kramer, Cipriano,* and *Hadley*. Circumspect districts will not await judicial modifications of the electoral systems, but will voluntarily examine, evaluate, and modify, when necessary, their voting procedures in a manner consistent with the court's admonitions.[176]

But predictions are based on hope and the hope has not been fulfilled. By and large, irrigation districts have resisted significant change in the distribution of political power and the courts have been effective allies. Determining the applicability of equal protection guarantees remains difficult and controversial. In *Salyer* and *Ball,* the Court has halted the extension of popular suffrage to irrigation districts. More importantly, the Burger Court has refused to subject these special districts to the strict scrutiny primarily employed by the Warren Court in a long line of cases. It may be that the present court is sympathetic to the need for flexibility in the design of local governments. Perhaps *Ball* is an eloquent statement of judicial restraint. Or it may be that the Court is most concerned with the protection of property. Whatever the case, many problems of special district governance remain.

Special governmental districts have been accorded many prerogatives of government but districts often are not subjected to established methods of control such as popular elections or direct regulation. After granting districts relative autonomy, state legislatures generally have not directly monitored district activities. The proliferation of special governmental dis-

176. Comment, *Voting in Special Districts: A Case Study of the Salt River Project,* 1969 LAW & SOC. ORDER [*now* ARIZ. ST. L.J.] 636.

tricts poses significant problems especially in the urban environment. The increasingly important role that many of these districts play recommends continued observation, evaluation, and, if necessary, modification of special governmental district structures and policies.