Florida State University Law Review

Volume 14 | Issue 1 Article 8

Winter 1986

State v. Frontier Acres Community Development District, 472 So. 2d 455 (Fla. 1985)

Douglas S. Roberts

Constitutional Law—NO LAND, NO VOTE: VALIDATING THE ONE-ACRE-ONE-VOTE PROVISION FOR ELECTIONS IN FLORIDA'S COMMUNITY DEVELOPMENT DISTRICTS—*State v. Frontier Acres Community Development District*—472 So. 2d 455 (Fla. 1985)

On May 1, 1984, the Board of County Commissioners of Pasco County, Florida, received a petition from Village Tampa, Inc., seeking to establish Frontier Acres Community Development District.[1] Pursuant to Florida's Uniform Community Development District Act of 1980,[2] the county commissioners approved the district on September 4, 1984.[3] The district was to be managed by an appointed five-member board of supervisors until a full board could be elected.[4] By law, the election of the five permanent supervisors had to be held within ninety days of the district's establishment, and only those who owned land within the district would be allowed to vote.[5] Landowners would receive one vote for each acre of land they owned within the district.[6] Those who lived in the district but owned no land were denied the right to vote for the district supervisors.

The validation of the district's capital improvement bonds by the Sixth Judicial Circuit Court was appealed by the state to the Florida Supreme Court.[7] The State Attorney contended that the statutory voting scheme violated the equal protection clause of the fourteenth amendment of the United States Constitution by failing to comply with the one-person-one-vote principle.[8]

In *State v. Frontier Acres Community Development District*,[9] the Florida Supreme Court found the election procedure constitutionally valid. The court relied on recent United States Supreme Court decisions that carved out an exception to the one-person-one-vote principle when the elected body is a limited purpose governmental unit exercising limited powers and disproportionately affecting the interests of landowners over nonlandowners.[10] Thus,

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1. State v. Frontier Acres Community Dev. Dist., 472 So. 2d 455, 455 (Fla. 1985).
2. Ch. 80-407, 1980 Fla. Laws 1628 (codified at FLA. STAT. § 190 (1985)).
3. Initial Brief for Appellant at 3-4, *Frontier Acres*, 472 So. 2d 455.
4. *Frontier Acres*, 472 So. 2d at 456.
5. FLA. STAT. § 190.006(2) (1985).
6. *Id.*
7. *Frontier Acres*, 472 So. 2d at 455.
8. *Id.* at 456.
9. 472 So. 2d 455, 457. "[N]othing in the equal protection clause precludes the legislature from limiting the voting for the board of supervisors by temporarily excluding those who merely reside in the district." *Id.*
10. *See* Ball v. James, 451 U.S. 355 (1981); Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., 410 U.S. 719 (1973); *see also infra* notes 127-57 and accompanying text.

the court permitted a scheme that diluted the votes of small landowners and completely disenfranchised residents of the district who owned no land at all.

Although the result in *Frontier Acres* is consistent with recent Supreme Court decisions, the Florida Supreme Court was too willing to find that the district fell within the constitutional exception to the one-person-one-vote principle without fully analyzing the powers and impact of such districts. The purpose of this Note is to examine the Florida Supreme Court's reasoning in *Frontier Acres* and its application of the equal protection exception created by the United States Supreme Court. The purpose, powers, and impact of community development districts will be considered in determining whether an exception to the one-person-one-vote requirement is justified.

I. COMMUNITY DEVELOPMENT DISTRICTS IN FLORIDA

During the 1970's, the Florida Legislature sought to control the burgeoning number of independent special districts in the state.[11] These districts were created under special acts of the legislature or general laws allowing local citizens to petition to create a special district.[12] Florida's statutes were strewn with a variety of types of special districts which often caused fragmented or duplicated services between districts and local governments.[13] Actual and potential abuses of power by independent districts, bond defaults, and conflicts between independent districts and local governments caused the legislature to seek ways to halt the indiscriminate creation of independent districts.[14] At the same time, Florida's continuing population growth—and the inexorable burden that growth placed on existing municipal services—caused the legislature to look for new ways to finance and deliver community services to new residents.[15] Rather than abolish independent special districts,

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11. *See* Kynoch & Van Assenderp, *Growth Management Through the Uniform Community Development Act*, 9 FLA. ENVTL. & URB. ISSUES 7 (Jan. 1982). *See generally* Hudson, *Special Taxing Districts in Florida*, 10 FLA. ST. U.L. REV. 49 (1982).

12. *See* Hudson, *supra* note 11, at 57-58.

13. *See* Kynoch & Van Assenderp, *supra* note 11, at 8.

14. *Id.* Developers sought to establish independent drainage districts as water control districts under FLA. STAT., ch. 298, as a means to develop large tracts of land. Similarly, independent road and bridge districts, under FLA. STAT. § 336, and independent water and sewer districts under § 153.53 were established by developers as a means to sell tax-exempt bonds to finance these improvements. Other districts such as mosquito control districts under FLA. STAT., ch. 388 (1973) could be created by public petition. *Id.*

15. FLA. STAT. § 190.002 (1985). *See generally* Kynoch & Van Assenderp, *supra* note 11.

the Florida Legislature fashioned the community development district, which was intended to be a single mechanism for establishing independent special districts and meeting the service demands created by growth.[16]

The Uniform Community Development District Act of 1980[17] was an attempt to create an alternative method for financing and managing the major infrastructures necessary for community development. As codified the law is intended to provide a uniform means by which districts can construct and manage basic community development services, such as roads, bridges, water and sewer systems, and parks.[18] The community development district is designed to coordinate the development of community services with local governments while remaining consistent with local government plans and policies.[19] The costs of these community services are to be assessed against those who benefit directly from the services.[20] However, the creation of a district requires a prior determination of need for the district and its compatibility with existing community services and local comprehensive plans.[21] Delivery of services requires a prior determination by applicable governmental bodies that the district should provide the services.[22]

Certain powers are delegated to a community development district in order for it to carry out its duty of limited service delivery. Among its general powers are the right to sue and be sued, enter

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16. Ch. 80-407, 1980 Fla. Laws 1628 (current version at FLA. STAT. ch. 190 (1985)). An earlier reform effort, the New Communities Act of 1975, FLA. STAT. § 163.603 (1976 Supp.), remained unused by developers as a means to finance infrastructure in new developments. Kynoch & Van Assenderp, *supra* note 11, at 9.

17. Ch. 80-407, 1980 Fla. Laws 1628 (codified at FLA. STAT. § 190 (1985)).

18. FLA. STAT. § 190.012(1) (1985). Other basic services the district could provide include waste collection, drainage systems, fire prevention, and street lights. *Id.*

19. *Id.* § 190.002(2).

20. *Id.*

21. *Id.* § 190.005(1)-(2). The creation of a community development district (CDD) of greater than 1,000 acres requires a determination by the Land and Water Adjudicatory Commission of the need for the district. *Id.* § 190.005(1). For a CDD of fewer than 1,000 acres, the determination of the need for the district is made by the county commissioners of the county in which the district would be created. *Id.* § 190.005(2). The body which approves the district must consider the following factors when deciding whether to grant or deny a CDD petition: (1) the truth and correctness of statements in the petition, (2) the consistency of the district with local or state comprehensive plans, (3) the size, compactness, and contiguity of the district as related to its ability to be an interrelated community, (4) the viability of a CDD as the best alternative to deliver community services in the area, (5) the compatibility of proposed CDD services with the capacity and uses of existing local community development facilities, and (6) the amenability of the area to separate special district government. *Id.* § 190.005(1)(c), (1)(e), (2)(c).

22. *Id.* § 190.012.

into contracts, own real and personal property, borrow money, issue bonds, and levy taxes.[23] Additionally, a community development district may condemn property for district purposes.[24] The special powers of the district extend to the planning, construction, and operation of the various community services which the district may provide.[25]

Creation of the district requires a petition endorsed by the owner or owners of 100% of the real property proposed to be included in the district and a designation of five persons to serve as an interim board of supervisors.[26] Once the district is approved and created, an election is to be held within ninety days to elect a permanent board of supervisors.[27]

The election of supervisors of a community development district occurs at a meeting of the landowners of the district.[28] Nonlandowners who reside in the district are not allowed to vote, while landowners who do not reside in the district may vote. At the landowners' meeting, and at subsequent elections, each landowner may cast one vote for each acre of land he owns within the district.[29] This exclusion of nonlandowning residents and the dilution of the votes of small landowners was the basis of the equal protection challenge in *Frontier Acres*.

Depending upon the size of the district, this disenfranchisement and malapportionment of votes lasts from six to ten years after the district is established. In districts of fewer than 5,000 acres, elec-

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23. *Id.* § 190.011.

24. *Id.*

25. *Id.* § 190.012(1). In 1984, the statute was amended to provide that the planning, construction, and operation by a CDD of parks and recreational facilities, fire prevention, local security, schools donated to public use, mosquito control, and waste collection were only to be undertaken after consent by the local general purpose government. Ch. 84-360, § 9, 1984 Fla. Laws 2106, 2114 (codified at FLA. STAT. § 190.012 (1985)).

26. FLA. STAT. § 190.005(1)(a) (1985). The petition is also to propose a name for the district and include a map and description of the property within a district, a timetable and estimated cost of construction, a designation of future public and private land uses in the district, and an economic impact statement. *Id.*

27. *Id.* § 190.006(2). Creation of the district by the Land and Water Adjudicatory Commission is by rulemaking pursuant to Fla. Stat. ch. 120, the Administrative Procedure Act. *Id.* § 190.005(1). Creation of a CDD by county commissioners is by local ordinance. *Id.* § 190.005(2). Rules or ordinances creating a CDD must include: the name of the district, a description of the district's boundaries, and the names of the five interim supervisors. *Id.* § 190.005(1)(d), (2)(d).

28. *Id.* § 190.006(2).

29. *Id.* A fraction of an acre is treated as one acre in allocating votes. *Id.* The term "landowner" is defined to include a private corporation. *Id.* § 190.003(13). In the case of the Frontier Acres district, Tampa Village, Inc., owned all of the land within the CDD and could elect all members of the board of supervisors.

tion of supervisors need not be based on the one-person-one-vote principle during the first six years; after that period, supervisors will be elected by all the electors in the district with each having only one vote.[30] In districts of more than 5,000 acres, the change to one-person-one-vote occurs in elections held ten years after the district's formation.[31] At that point district elections must conform with the one-person-one-vote principle. Therefore, nonlandowning residents are denied the right to vote only during the period the district is being developed. However, this is also the period when much of the district's bonded indebtedness is likely to be incurred as community facilities are financed and built. Thus, a community development district allows a land developer to build infrastructure with bond funds that must be repaid by residents who move into the district later, but who can be denied the right to vote for as long as ten years after the district's creation.

During its 1984 Regular Session, the Florida Legislature amended the Uniform Community Development District Act to require that the board of supervisors of a community development district proposing to exercise its ad valorem taxing power be elected by all qualified electors in the district, whether or not they owned land.[32] However, a community development district need not exercise its ad valorem taxing power. Therefore, it may avoid the statutory requirement for popular election.

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30. FLA. STAT. § 190.006(3)(a) (1985).

31. *Id.* After the sixth or tenth year, a supervisor shall be "a qualified elector . . . elected by the electors." *Id.* "Elector" is defined as a voter who is a landowner or who resides in the district. *Id.* § 190.003(11). Although a corporate landowner would apparently still be allowed to vote in district elections, it would be limited to casting one vote while nonlandowning residents who are otherwise qualified to vote would be allowed to vote for the first time.

32. Ch. 84-360, § 6, 1984 Fla. Laws 2106, 2111 (codified at FLA. STAT. § 190.006(3)(a) (1985)). Previously, a landowner-elected board of supervisors could levy ad valorem taxes on all taxable property in the district in order to raise funds to retire general obligation bonds. FLA. STAT. § 190.021(1)(1983). The 1984 amendment did not remove the power to assess ad valorem taxes; it only required that the board of supervisors of a district levying those taxes first be popularly elected. Ch. 84-360, 1984 Fla. Laws 2106.

CDD's are empowered to issue revenue bonds, payable from revenues received from the project so funded. Voter approval of these bonds is not required. FLA. STAT. § 190.016(8) (1985). The CDD board also may levy benefit taxes to repay bonds issued to finance water management and control plans in the district. Maintenance taxes may also be levied for upkeep of these same facilities. These taxes, until paid, are liens on the property assessed. *Id.* § 190.021(2)-(3).

Special assessments may be levied against benefited property for the costs of construction of those community development services the CDD undertakes under authority of FLA. STAT. § 190.003. These assessments are payable in 20 yearly installments. The assessments are intended to pay for the major improvements and services undertaken by the district.

II. VALIDATION OF THE VOTING SCHEME

The Frontier Acres Community Development District comprised 187 acres to be developed into a park for recreation vehicles and mobile homes.[33] Village Tampa, Inc., owned 100% of the land within the district.[34] The district was to be developed in eight phases over eight years with capital improvements, including streets, water and sewer systems, and recreational facilities.[35] The estimated cost for these facilities was seven million dollars.[36]

On May 1, 1984, Village Tampa petitioned the Pasco County commissioners to establish a district by ordinance, pursuant to section 190.005, Florida Statutes.[37] The petition complied with the statutory provisions required at the time: it described the district boundaries, exhibited the consent of the owner of 100% of the district's lands (in this case, Village Tampa, Inc.), estimated the costs and timetable for district development, and named a preliminary five-member board.[38]

On September 4, 1984, the county commissioners adopted an ordinance creating the Frontier Acres Community Development District.[39] Before granting its approval, however, the commission imposed two conditions. First, the district was to remain a rental project until its capital improvement bonds were retired. Secondly, the developer, Village Tampa, Inc., was to guarantee repayment of the bonds.[40] The county commissioners were apparently attempting to avoid some of the problems that had plagued independent special districts in the past.

During the period in which the proposed district was under consideration by the county commissioners, the Florida Legislature amended chapter 190, Florida Statutes.[41] Among the changes was a requirement that a petition for a new community development district contain an economic impact statement.[42] The amendment ap-

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33. Initial Brief for Appellant at 2, *Frontier Acres*, 472 So. 2d 455.
34. *Id.*
35. *Id.* at 2-3.
36. *Id.* at 3.
37. *Frontier Acres*, 472 So. 2d at 455.
38. *Id.* at 455-56.
39. Initial Brief for Appellant at 4, *Frontier Acres*, 472 So. 2d 455.
40. *Id.* at 3-4.
41. Ch. 84-360, § 4, 1984 Fla. Laws 2106, 2109 (codified at FLA. STAT. § 190.005(1)(a) (1985)).
42. *Id.* The economic impact statement is to be prepared in conformance with FLA. STAT. § 120.54(2) (1985) (requiring an economic impact statement on adoption or amendment of an administrative rule).

plied only to districts created after June 29, 1984.[43] Because Frontier Acres was not created until September 4, 1984, the new provisions applied.[44] However, no separate economic impact statement was prepared before the county commissioners established the Frontier Acres district.[45]

Shortly after receiving the commissioners' approval, the appointed board of supervisors authorized the issuance of sixteen million dollars in special assessment capital improvement bonds.[46] The board pledged the proceeds of the district's special assessments to pay off the bonds.[47] The bonds were validated by the Sixth Judicial Circuit Court[48] in a proceeding in which the State Attorney sought to show cause why the bonds should not be validated.[49]

The state appealed the circuit court's validation of the bonds to the Florida Supreme Court, arguing that the statutory one-acre-one-vote election procedure violated equal protection requirements by excluding nonlandowning residents.[50] The state also argued that the district was invalidly created because its petition did not contain the statutorily required economic impact statement.[51] Citing *Reynolds v. Sims*[52] and subsequent cases,[53] the state argued that community development districts exercised the type of governmental powers that caused the Supreme Court to require application of the one-person-one-vote principle to popular elections for legislative bodies.[54] The weighted voting scheme itself, which allotted one vote for each acre, was not directly challenged on appeal.

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43. Ch. 84-360, § 20, 1984 Fla. Laws 2119.

44. *Frontier Acres*, 472 So. 2d at 457-58.

45. *Id.* at 457.

46. *Id.* at 456.

47. *Id.*

48. *Id.* The validation of the bonds occurred under FLA. STAT. ch. 75. Subsequent to the district board's bond resolution, a complaint was filed in the circuit court to determine the district's authority to incur bonded indebtedness and the legality of the proceedings by which the district decided to issue the bonds. The circuit court hearing is also to determine any issues that may later call into question the validity of the bonds or the district's authority to issue them. FLA. STAT. § 75.09 (1985).

49. Initial Brief for Appellant at 1, *Frontier Acres*, 472 So. 2d 455. *See* FLA. STAT. § 75.05 (1985) (granting local state attorneys authority to appear in validation proceedings).

50. *Frontier Acres*, 472 So. 2d at 455. Appellate review of bond validations lies in the supreme court. FLA. STAT. § 75.08 (1985).

51. *Frontier Acres*, 472 So. 2d at 457.

52. 377 U.S. 533 (1964). *See infra* notes 86-90 and accompanying text.

53. Hadley v. Junior College Dist., 397 U.S. 50 (1970); Kramer v. Union Free School Dist., 395 U.S. 621 (1969); Avery v. Midland County, 390 U.S. 474 (1968).

54. *Frontier Acres*, 472 So. 2d at 456.

The Frontier Acres district argued that it did not exercise general governmental powers, but instead was a limited purpose governmental unit.[55] Further, the district argued that the impact of its operations disproportionately affected district landowners as opposed to nonlandowners.[56] Because of this limited purpose and disproportionate effect, Frontier Acres contended that it fell within the exception to the one-person-one-vote principle carved out by the Supreme Court in *Salyer Land Co. v. Tulare Lake Basin Water Storage District*[57] and *Ball v. James*.[58] Frontier Acres conceded that an economic impact statement was not included in the petition.[59] However, the district argued that it had substantially complied with the requirement because the county commissioners considered the district's economic impact before granting the petition.[60]

In a six-to-one decision, the Florida Supreme Court agreed that the district was the type of governmental unit excepted from the one-person-one-vote principle.[61] However, the court found the district's creation invalid under chapter 190 because of the lack of an economic impact statement.[62] The court ruled that the statute requires full compliance with this provision for the creation of a valid district.[63]

The court determined that the one-acre-one-vote provision was a valid voting procedure for a limited purpose governmental unit such as the Frontier Acres district.[64] The court noted that the district's narrow statutory purpose was to provide "community infra-

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55. *Id.*

56. *Id.*

57. 410 U.S. 719 (1973). *See infra* notes 128-140 and accompanying text.

58. 451 U.S. 355 (1981). *See infra* notes 143-156 and accompanying text.

59. *Frontier Acres*, 472 So. 2d at 458.

60. *Id.*

61. *Id.* at 456.

62. *Id.* at 457.

63. *Id.* at 458. The court found no evidence in the record that the county commissioners had in fact considered the requisite elements of the economic impact statement. *Id.*

This holding is curious in light of Florida courts' demonstrated tolerance toward preparation of economic impact statements for administrative rules proposed under ch. 120, FLA. STAT. The legislature required the same elements for an economic impact statement for a proposed CDD as it did for a proposed agency rule. FLA. STAT. § 190.005(1)(a)(8) (1985). The provision requires the preparation of a detailed economic impact statement. *See* FLA. STAT. § 120.54(2) (1985). However, Florida courts have been willing to uphold the validity of administrative rules adopted without the prior preparation of an economic impact statement. *See* Florida-Texas Freight v. Hawkins, 379 So. 2d 944 (Fla. 1979); Polk v. School Bd., 373 So. 2d 960 (Fla. 2d DCA 1979).

64. *Frontier Acres*, 472 So. 2d at 456.

structure and to serve projected population growth without financial or administrative burden to existing general purpose local governments."[65] Further, the court noted that the district's powers were limited to those necessary for the district to carry out its purpose.[66] Also, the court found that the powers exercised by the district did not constitute sufficient general governmental power to require adherence to the one-person-one-vote principle.[67]

Additionally, the court noted that not only were the district's powers limited in scope, but their exercise had to comply with state law and local ordinances.[68] District development undertaken by the board of supervisors had to be consistent and compatible with local and state regulations and development plans. The exercise of powers was limited to ensuring that sufficient community development services would be provided for future growth in the state.[69]

Under the court's analysis, not only were the district's purpose and delegated powers limited, but the impact of the district's operations fell more heavily on landowners than on others.[70] The court concluded that landowners bear the initial burden of the costs of district projects.[71] By inference, the court recognized that nonlandowning residents would be affected by the district's operations, but not to the same extent as would landowners.

Citing the Supreme Court's decisions in *Salyer Land Co.* and *Ball*, the court found the community development district to be a limited purpose governmental body exercising limited powers, with the impact of its operations and the burden of its financing falling to a much greater extent on district landowners.[72] Because the district fell within the exception, the court found it reasonable for the "legislature to have concluded that . . . landowners, to the exclusion of other residents, should initially elect the board of supervisors."[73] Therefore, the court upheld the temporary exclusion of nonlandowning residents from voting in district elections.[74]

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65. *Id.* at 457.
66. *Id.* at 456.
67. *Id.*
68. *Id.* at 457.
69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.* at 456.
73. *Id.* at 457.
74. Although the weighted voting scheme was not challenged in this appeal, the court would have likely held it valid under the disproportionate impact rationale.

III. THE ONE-PERSON-ONE-VOTE PRINCIPLE AND ITS EXCEPTION

The Supreme Court has long viewed the right to cast an effective vote in popular elections as a fundamental right.[75] The right to vote is "the essence of a democratic society, and any restrictions on that right strike at the heart of representative government."[76] The Court has struck down, as violative of equal protection standards, state schemes which diluted or disenfranchised a qualified voter's right to vote.[77] Each vote is to be accorded the same weight as any other vote.[78] Restrictions on the right to cast an equal vote must serve a compelling state purpose before those restrictions will be upheld.[79] Applying the principle of "one person, one vote"[80] and the piercing light of strict scrutiny,[81] the Supreme Court has struck down restraints that unreasonably denied an effective vote.[82] However, in two recent cases the Court has created an exception of uncertain dimensions which allows dilution of voting power or outright disenfranchisement when the election is for a special purpose governmental unit which disproportionately affects those allowed to vote.[83] The Florida Supreme Court looked to this exception when it upheld the election scheme for the Frontier Acres Community Development District.

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75. *See generally* L. TRIBE, AMERICAN CONSTITUTIONAL LAW § 16-10 (1978).

76. Reynolds v. Sims, 377 U.S. 533, 555 (1964).

77. *Id.*

78. *Id.* at 579.

79. *Id.*

80. The phrase "one person, one vote" originated in Justice Douglas' majority opinion in Gray v. Sanders, 372 U.S. 368 (1963). "The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote." *Id.* at 381.

81. Under the strict scrutiny test, state restrictions on fundamental rights must serve a compelling state interest and employ the least restrictive alternative in fulfilling that interest. *See* L. TRIBE, *supra* note 75, at § 16-6-16-8. This standard of review is also applied where suspect classifications, such as race, are employed to deny equal protection. In cases involving suspect classifications, the Court's application of strict scrutiny has proven fatal to most restrictions of such rights. However, where voting rights are involved, the Court has let stand voting restrictions based on age and residency; it has applied a balancing test between the state's interest in the restriction and the burden placed on the right to vote. *See* Comment, *Equal Protection and Due Process: Contrasting Methods of Review Under Fourteenth Amendment Doctrine*, 14 HARV. C.R.-C.L.L. REV. 529, 537-41 (1979). Although the scrutiny applied by the courts is exacting, it is not as demanding as the scrutiny applied to suspect classifications. *Id.* at 561-62.

82. *See infra* notes 84-105 and accompanying text.

83. Ball v. James, 451 U.S. 355 (1981); Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., 410 U.S. 719 (1973).

A. *Dilution of Voting Strength*

The landmark case of *Baker v. Carr*[84] established that an equal protection challenge to a state's apportionment of seats in its legislature presents a justiciable controversy which may be adjudicated in federal court.[85] Two years later, in *Reynolds v. Sims*,[86] the Court invalidated a sixty-year-old Alabama apportionment plan.[87] The Court held that the "Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis."[88] A population-based apportionment plan assures "[f]ull and effective participation by all citizens in state government" through the exercise of "an equally effective voice in the election of members of [the] state legislature."[89] The Court stated that the right to vote preserves other basic civil and political rights and therefore an alleged infringement of this right requires careful scrutiny.[90]

The Court extended the equal apportionment requirement to local government legislative bodies in *Avery v. Midland County*.[91] In *Avery*, a local citizen challenged the unequal distribution of population among districts for the five-member Midland County, Texas, Commissioners Court.[92] The city of Midland, with ninety-five percent of the county's population, was completely within one district; the remaining population was apportioned among three districts.[93] The fifth member was elected at-large and voted only in the event of a tie.[94] The Supreme Court held that this allocation of voting

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84. 369 U.S. 186 (1962).

85. *Id.* at 233.

86. 377 U.S. 533 (1964).

87. *Id.* at 568.

88. *Id.* The Court went on to find that the dilution of the right to vote based on a malapportioned legislature was unconstitutional. *Id.* For example, if 1,000 voters lived in legislative district *A* and 10,000 lived in district *B*, and each district had one representative, the voters in district *A* would have ten times the voting strength of the voters in district *B*. The dilution occurs by this overvaluing or undervaluing of votes between districts. Dilution of voting also occurs where certain voters cast more votes than others, such as where votes are allocated on a one-acre-one-vote scheme. *See* Ball v. James, 451 U.S. 355 (1975).

89. *Reynolds*, 377 U.S. at 565. The Court did not require perfect apportionment of legislative districts but permitted slight deviations in population between districts. "[T]he overriding objective must be substantial equality of population . . . so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State." *Id.* at 579.

90. *Id.* at 562.

91. 390 U.S. 474, 476 (1968).

92. *Id.* at 475-76.

93. *Id.* at 476.

94. *Id.*

strength offended equal protection standards.[95] The Court saw little difference, for purposes of the equal protection clause, between the power exercised by state legislatures and the power exercised by local governments.[96]

The Court looked to the powers exercised by the local government and its impact on local citizens before concluding that equal protection standards applied.[97] The Court concluded that the Commissioners Court had the "authority to make a substantial number of decisions that affect[ed] all citizens" of the county.[98] Equal protection standards, therefore, required that the commissioners' districts have substantially equal populations.[99]

However, the Supreme Court intimated that were this not a general governmental unit with authority over an entire geographical area, it might reach a different conclusion regarding voting apportionment.[100] The Court reserved the question of whether "a special-purpose unit of government . . . affecting definable groups of constituents more than other constituents . . . may be apportioned in ways which give greater influence to the citizens most affected by the organization's functions."[101]

In *Hadley v. Junior College District*,[102] the Supreme Court was unwilling to accept the argument that the election of trustees for a junior college district fell within the apparent exception mentioned in the *Avery* dictum. The Court found that the trustees of a junior college district in metropolitan Kansas City, Missouri, exercised general governmental powers with impacts throughout the district.[103] Although the trustees' powers were less broad than those of the Commissioners Court in *Avery*, the Court held that their powers were sufficiently important to invalidate the Missouri stat-

95. *Id.* at 480-81.

96. *Id.* at 481. The Court rejected the argument that equal apportionment of elected local governments was not required where an equally apportioned state legislature exercised control over the local government. The Court found that much policy-making power was delegated to such governmental units. *Id.*

97. *Id.* at 483-84. Among the powers the Commissioners Court exercised were setting of local tax rates, equalization of property assessments, issuance of bonds, adoption of a county budget, and planning for the future development of Midland County. *Id.*

98. *Id.* at 484.

99. *Id.* at 484-85.

100. *Id.*

101. *Id.* The Court suggested that it would not be an obstacle "in the path of innovation, experiment, and development among units of local government." *Id.* at 485.

102. 397 U.S. 50 (1970).

103. *Id.* at 53-54. The powers exercised by the district's trustees included the power to levy and collect taxes, issue bonds, hire and fire teachers, discipline students, make contracts, condemn land, and, in general, manage the junior college's operation. *Id.* at 49.

utory scheme which apportioned members of the trustees among various districts.[104] The Court noted that education, the sole purpose of the district trustees, has traditionally been treated as a vital governmental function, suggesting that this factor contributed to the Court's ruling.[105]

The *Hadley* Court held that, as a general rule, adherence to the one-person-one-vote principle is required whenever a state selects by popular vote officials who exercise general governmental powers.[106] However, the Court went on to suggest that where the officials' duties "are so far removed from normal governmental activities and so disproportionately affect different groups . . . a popular election in compliance with *Reynolds* might not be required."[107] Thus, in spite of a strong rule that a popular election must conform to the one-person-one-vote principle, the Court hinted again at the possible exception identified in *Avery*. A governmental unit with limited functions not affecting the rights and interests of persons not allowed to vote apparently might not be subjected to the strict scrutiny applicable to the one-person-one-vote principle.

B. Disenfranchisement

In a separate line of cases, the Supreme Court applied the one-person-one-vote principle to overturn state restrictions on the right to vote. In *Kramer v. Union Free School District*,[108] the Court struck down a New York statute limiting the vote in school district elections to landowners or lessees and parents of district school children. The Court applied strict scrutiny to the statute and found that once the state decides to elect public officials by popular election, it must conform to equal protection standards.[109] The state could not allow certain individuals to vote and not others,

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104. *Id.* at 53-54. The Missouri statute apportioned the six trustees among local school districts within the larger junior college district based on the number of persons between six and twenty years old. The Kansas City School District, with 60% of the persons in that age group, was only apportioned 50% of the trustees, or three of the available six seats. *Id.* at 51.

105. *Id.* at 57.

106. *Id.* at 50-51.

107. *Id.* at 51.

108. 395 U.S. 621 (1969).

109. *Id.* at 626. "[S]tate apportionment statutes, which may *dilute* the effectiveness of some citizens' votes, receive close scrutiny from this Court. . . . No less rigid an examination is applicable to statutes *denying* the franchise to citizens . . . ." *Id.* (citations omitted) (emphasis in original).

absent a compelling state interest for the restriction.[110] The New York statute was not sufficiently tailored to the state's goal of restricting the right to vote to those "primarily interested" in school affairs.[111] However, the Court refused to express an opinion on whether New York could in some circumstances restrict the right to vote to those "primarily affected."[112] The Court suggested that the validity of such a classification depended on whether those disenfranchised were "substantially less interested or affected" than those allowed to vote.[113] The Court thus acknowledged the possibility of an exception to the one-person-one-vote principle in disenfranchisement cases similar to the one suggested in the malapportionment cases.

In three subsequent cases, the Court applied strict scrutiny and found property ownership requirements for voters unconstitutional. In *Cipriano v. City of Houma*,[114] a Louisiana law granted the vote in municipal utility revenue bond elections only to property taxpayers. The Court found that the law violated the equal protection clause because it failed to promote a compelling state interest.[115] Further, the bonds were paid by revenues from utility customers regardless of whether they owned land.[116]

In *Phoenix v. Kolodziejski*,[117] the Court invalidated an Arizona scheme which limited voting in general obligation bond elections to those who paid property taxes. The Court concluded that all residents had a substantial interest in the improvements and would be substantially affected by the election.[118] Because there were insufficient differences between the interests of landowners and nonlandowners, the Court ruled that the classification scheme was not constitutionally justified.[119]

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110. *Id.* at 633.
111. *Id.*
112. *Id.* at 632.
113. *Id.*
114. 395 U.S. 701 (1969). This decision was issued the same day as *Kramer*.
115. *Id.* at 706.
116. *Id.* at 705.
117. 399 U.S. 204 (1970).
118. *Id.* at 209. The bonds issued could be used to finance various municipal improvements, such as parks and recreation facilities, sewer systems, and public safety buildings. The bonds were to be paid off by property taxes, although the city had the right to retire the bonds using other sources of revenue. *Id.* at 205-06.
119. *Id.* The Court noted that although property tax revenues might be the sole source of debt service on the general obligation bonds, the tax would be indirectly reflected in rental payments. The fact that any new taxes used to retire the bonds would be passed on to tenants in the form of higher rent established that nonproperty owners were sufficiently interested in the elections to be allowed to vote. *Id.* at 210-11.

Hill v. Stone[120] involved a 1972 Fort Worth, Texas, election to approve general obligation bonds for city improvements.[121] The voting scheme required approval by a majority of those voting who had also made real or personal property available for taxation.[122] The Supreme Court, following its decision in *Kramer*, struck down these state and local restrictions.[123] The Court rejected the city's argument that this was a "special interest" election, noting that it had previously held a general obligation bond issue to be of general interest because the improvements benefited all residents.[124] Additionally, the state could not meet the Court's compelling interest standard under strict scrutiny so as to justify discriminating between voters who owned and declared taxable property and those who did not.[125] Further, although landowners had the burden of repaying the bonds through property taxes, the Court suggested that these taxes are passed on to tenants and others indirectly and thus the burden of repayment fell on a wider class of people than those who were permitted to vote.[126]

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120. 421 U.S. 289 (1975).

121. The election was held to obtain voter approval of bonds to improve the city transit system and construct a public library. *Id.* at 292.

122. *Id.* at 291-92. The Texas Constitution provided that in elections to endorse issuance of municipal bonds, only those who owned taxable property could vote. The implementing statute provided that the voter "render" property for tax purposes before being allowed to vote. *Id.* at 291. Rendering property required the owner to report it to the local tax assessor, who would list it on the tax rolls. Taxable property that could be rendered included real, personal, or mixed property. *Id.* at 291 n.1. The Fort Worth City Charter restricted electors in bond elections to otherwise qualified voters who also paid taxes on property within the city. *Id.* at 292.

Following *Kramer*, Texas established a dual voting scheme in an effort to preserve subsequent bond elections in the event the state and local restrictions were later found unconstitutional. This procedure required property-owning voters to cast their ballots in one box and other registered voters to cast theirs in a second box. Approval of the bond issue required a majority vote of those who owned taxable property (the votes in the first box) and a majority vote of all those who voted (the votes in both boxes combined). *Id.* at 292.

In the Fort Worth election, the transportation bond issue received the required majorities, but the property-owning voters rejected the library bond issue, although it was approved by a majority of all voters. Thus, the library bond issue was deemed not to have been approved. *Id.* at 293.

123. *Id.* at 300.

124. *Id.* at 297. In *Kolodziejski*, the Court held that a city could not restrict the right to vote in general obligation bond elections to only those voters who paid local property taxes.

125. *Id.* at 300. The city sought to defend the scheme by arguing that the restriction encouraged otherwise reluctant property owners to render their property so as to qualify to vote in bond elections. The Court found this unconvincing because a person need only declare a small amount of his property in order to qualify to vote in bond elections; the scheme did not require disclosure of all taxable property in order to vote. *Id.* at 299-300.

126. *Id.* at 299.

C. An Exception to the One-Person-One-Vote Principle

Finally, in two cases challenging the voting requirements in western irrigation districts, the Supreme Court was squarely presented with the opportunity to describe the parameters of the exception it had suggested in the earlier cases. Once the challenged provision was found to fall within the exception, the Court relaxed its standard of review by applying a rational relationship test and sustained the voting restrictions.[127]

In *Salyer Land Co. v. Tulare Lake Basin Water Storage District*,[128] the Supreme Court sustained a California statute which permitted only landowners within a water storage district to vote in elections for district supervisors.[129] By statute, each landowner was entitled to cast one vote for every $100 worth of land he owned within the district.[130] Thus, the statute diluted the votes of small landowners and barred nonlandowning residents from voting in district elections altogether.[131]

Justice Rehnquist, writing for a six-member majority, found that the issue presented was the one the Court had reserved in *Avery*:

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127. Unlike the strict scrutiny test, the rational relationship test is highly deferential to the legislative purpose behind the challenged law. If the Court can perceive any rational purpose behind the statute, the Court will sustain it. The test allows legislation, particularly in the area of economic regulation, a presumption of constitutionality in the face of an equal protection challenge. A finding that the rational relationship test attaches is tantamount to a finding of constitutionality. *See* L. TRIBE *supra* note 75, at § 16-2; *see also* Note, Ball v. James *and the Rational Basis Test: An Exception to the One Person-One Vote Rule*, 31 AM. U.L. REV. 721, 732 (1982).

128. 410 U.S. 719 (1973).

129. *Id.* at 734-35. The Tulare Lake Basin Water Storage District was created under California law to acquire, appropriate, divert, store, conserve, and distribute water. *Id.* at 723. Additionally, the district had the authority to generate and sell hydroelectric energy incidentally produced by the district's water storage and distribution activities. The district consisted of 193,000 acres of fertile farmland, 85% of which was cultivated by four corporations. The district population was comprised of 77 individuals, most of whom worked for one of the four corporations. *Id.*

Districts such as the one in the Tulare Lake Basin were created in response to the inability of local governments to meet irrigation needs for extensive farming in the American West. These districts, with their powers to assess district costs against landowners and to obtain tax-exempt financing, have flourished during the twentieth century. With these powers, the districts have constructed and maintained large water storage and diversion projects in vast tracts of land. *See* Leshy, *Irrigation Districts In A Changing West—An Overview*, 1982 ARIZ. ST. L.J. 345; Note, *Desert Survival: The Evolving Western Irrigation District*, 1982 ARIZ. ST. L.J. 377.

130. *Salyer Land Co.*, 410 U.S. at 724-25.

131. However, the California law did not require that landowners reside in the district before they could vote in district elections. CAL. WATER CODE § 41000 (West 1966). A corporate landowner could vote through an agent authorized to vote on the corporation's behalf. *Id.* at § 41004.

whether a "special purpose unit of government" with functions affecting "definable groups of constituents more than other constituents" may be apportioned so as to give greater influence to those most affected by the governing body.[132] The Court answered this question in the affirmative.[133] First, the water storage district was found to be a special purpose district with relatively limited authority even though it possessed some traditional governmental powers.[134] In spite of these powers, the district did "not exercise what might be thought of as 'normal governmental' authority."[135] Not only was the district created for a special purpose, its operations disproportionately affected landowners.[136] All district costs were assessed against land and borne by the landowners in proportion to the benefits received from district operations.[137] Any delinquency of payments resulted in a lien on the landowner's property until paid.[138] Because landowners bore the entire cost of the district's operations, the California Legislature "could rationally conclude that [the landowners], to the exclusion of residents, should be charged with responsibility for its operations" and allowed to vote for its directors.[139]

Thus, the Court was able to fit the Tulare Lake Basin Water Storage District within the exception suggested in *Avery*, *Hadley*, and *Kramer*, and thereby sustain restrictions on, and dilution of, the franchise. The Court refused to extend the general rule that voting is a fundamental right which requires application of strict

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132. *Salyer Land Co.*, 410 U.S. at 720-21 (quoting *Avery*, 390 U.S. at 483-84).

133. *Id.* at 728.

134. *Id.* The district's primary purpose was to supply irrigation water to agricultural lands. The district board of supervisors had the power to acquire property by purchase and other means, CAL. WATER CODE § 43500 (West 1966), or by condemnation, *id.* § 43530; to contract and cooperate with other governmental units to carry out district projects, *id.* § 43151; to employ a district staff, *id.* § 43152(c); and to issue bonds, *id.* § 45400.

135. *Salyer Land Co.*, 410 U.S. at 729. The Court noted that the district provided no other general public services typically funded by local governments, such as schools, public roads, housing, and utilities. The district did not supply police or fire protection nor did it provide facilities intended to improve the quality of life in the district. *Id.* at 728-29.

136. *Id.* at 729. The Court recognized that nonlandowning residents of the district might be affected by the district's operations. But this effect was too indirect to find that the California law was less than reasonable given the disproportionate effect on landowners as a group. *Id.* at 730-31.

137. *Id.* at 729.

138. *Id.*

139. *Id.* at 731. The Court inferred a rational purpose for the law, finding that the "California Legislature could quite reasonably have concluded" that the voting scheme was necessary to attract the support of landowners. The landowners may have been reluctant to support creation of the district unless they and other landowners were assured virtual control of the district. *Id.*

scrutiny to any restrictions.[140] Instead the Court was willing to sanction the district's weighted voting system and voter qualifications in district elections because the water storage district was a limited purpose unit of government and its operations disproportionately affected landowners as a group.[141] The *Salyer Land Co.* decision provided a basis for several state courts to endorse property qualifications for voters in various types of special districts.[142]

In *Ball v. James*,[143] the Supreme Court was presented with a second challenge to property-based voting restrictions, this time regarding an Arizona water supply district.[144] The Court reaffirmed and expanded the *Salyer Land Co.* exception to the one-person-

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140. The Court distinguished the statutes challenged in those "strict scrutiny" cases as having gone too far in granting the right to vote to some who were directly affected while denying it to others who were also directly affected by the respective governmental unit's operations. *Id.* at 726-28. The Court also noted that some such governmental units exercised general governmental powers to which the one-person-one-vote principle would apply. *Id.*

141. Justice Douglas dissented. *Id.* at 735 (Douglas, J., dissenting). He maintained that the burdens of the district fell upon nonlandowning residents in the form of potential personal effects from district operation of irrigation and flood control systems. Justice Douglas thought the district exercised sufficient governmental authority that had impact throughout the district so as to insure the applicability of the one-person-one-vote principle in district elections. Justice Douglas also strongly objected to the right of corporations to control the district's board of directors through the use of their land holdings in the district and the votes those holdings represented to the exclusion of district residents. *Id.* at 738-42.

On the same day, the Supreme Court decided Associated Enters. v. Toltec Watershed Improvement Dist., 410 U.S. 743 (1973). There the Court upheld a Wyoming law which allowed only landowners to vote in elections to create the district via a weighted voting scheme based on the number of acres of land owned. The Court found the district to be a limited purpose governmental unit which had a disproportionate effect on landowners. Furthermore, the district had been created pursuant to legislation enacted by the Wyoming Legislature, a body in which all voters were fairly represented. Also, the watershed district had to be approved by the popularly elected supervisors of the local soil and water conservation districts. *Id.* at 744-45.

142. *See* Philippart v. Hotchkiss Tract Reclamation Dist., 54 Cal. App. 3d 797, (Cal. Ct. App. 1976) (reclamation district's weighted voting scheme based on land values and permitting only landowners to vote not in violation of equal protection); Simi Valley Recreation & Park Dist. v. Local Agency Formation Comm'n, 51 Cal. App. 3d 648 (Cal. Ct. App. 1975) (local park and recreation district provided a single service and exercised limited powers, so limiting franchise to those affected valid); Chesser v. Buchanan, 568 P.2d 39 (Colo. 1977) (tunnel district within the *Salyer Land Co.* exception due to district's special purpose and the disproportionate burden on landowners). *But see* Choudhry v. Free, 552 P.2d 438 (Cal. 1976) (property qualifications for candidates for board of directors of an irrigation district invalidated after distinguishing *Salyer Land Co.*). *See also* Johnson v. Lewiston Orchards Irrigation Dist., 584 P.2d 646 (Idaho 1978) (property qualification for irrigation district voters invalidated because district substantially affected all city residents).

143. 451 U.S. 355 (1981).

144. The challenged statute permitted the district to limit voting in elections for district directors to otherwise qualified voters who owned land in the district. Each landowner was allowed to cast one vote for each acre of land owned in the district. ARIZ. REV. STAT. ANN. §§ 45-909, 45-983 (Supp. 1984).

one-vote principle.[145] The Court held that the primary purpose of the Salt River Project Agricultural Improvement and Power District—to conserve and deliver water—was sufficiently narrow and limited to fall within the exception.[146] The district's powers, although greater than those exercised by the water storage district in *Salyer Land Co.*,[147] were not the type of governmental powers that invoke the strict requirements of the one-person-one-vote principle.[148] The district could not enact local laws controlling the conduct of residents; it could not impose ad valorem or sales taxes; nor did it perform the "normal functions of government," such as the maintenance of streets, the provision of health and welfare services, or the operation of public schools.[149]

Not only was the Salt River district's legislative purpose a narrow one, but its impact fell disproportionately on landowners whose lands were subject to liens securing district bonds and who supplied the district's capital needs through property assessments.[150] While the Court realized that the district's operations affected nonlandowning residents, its concern was whether the impact was disproportionately felt by landowners.[151] If so, the state could reasonably decide to allow only landowners to vote in district elections and to make the weight of the vote dependent upon the size of their landholdings.[152]

The Court emphasized that the district was essentially a "business enterprise, created by and chiefly benefiting a specific group

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145. *Ball*, 451 U.S. at 371.

146. *Id.* at 370.

147. *Id.* at 365-66. "[T]he services . . . provided by the . . . District are more diverse and affect far more people" than those discussed in *Salyer Land Co. Id.* at 365. The Arizona district served one-half of the residents of the state whereas the district in *Salyer Land Co.* served an area with only 77 residents. The Salt River district generated hydroelectricity, becoming one of the largest electric utilities in the state and meeting most of its capital and operating costs for water supply through sales of electricity. As much as 40% of the district's water was supplied for ultimate consumption by urban, non-agricultural consumers. *Id.*

148. *Id.* at 366.

149. *Id.*

150. *Id.* at 370.

151. *Id.* at 371. The nonlandowning challengers to the district voting scheme pointed to the district's major electric utility operation, which accounted for 98% of the district's operating revenues and was used to pay for the district's water operations. *Id.* at 370 n.19. The Court responded that the electric utility was a business operation, and the relationship was one of consumers and private supplier and not one of citizen-voter and governmental unit. *Id.* at 370. Further, neither the existence of this utility enterprise nor its size made the district a governmental unit. The Court noted that the supply of electricity is not a traditional governmental service. *Id.* at 368.

152. *Id.* at 371.

of landowners."[153] However, as nominal public bodies, the districts were able to pursue inexpensive public bond financing of district projects.[154] In fact, the Court stated that the sole legislative purpose in making the water district a public entity was to enable it to obtain interest-free financing.[155] This quasi-public flavor, however, would not raise the district to the level of a public body to which the one-person-one-vote rule would apply.[156]

In *Salyer Land Co.* and *Ball*, the Supreme Court refused to recognize that voting was a fundamental right which attached to all public elections. Instead, the Court looked first at the nature of the elected body to determine whether it was a general governmental unit. If so, equal protection required that the election be held on a one-person-one-vote basis. If the body was a limited purpose one, the Court determined the impact of the body on those affected by its activities. If the impact was disproportionate on one group of people, those persons could be allowed a voice in the body's affairs to the exclusion of those less affected.

In developing this two-part analysis of special purpose/disproportionate impact, the Court has not formulated a bright line by which other courts may determine when the one-person-one-vote principle applies. A case-by-case determination of whether the activities of the district are those of a general governmental unit is the only analysis possible under *Salyer Land Co.* and *Ball*. Defining which activities are traditional governmental activities performed by a general governmental body becomes a burden the challenger must bear.[157] The election scheme, therefore, enjoys a presumption of validity even when it openly dilutes or disenfranchises voting power.

IV. Applying the Exception to Frontier Acres

The lesson of *Salyer Land Co.* and *Ball* is that the reviewing court must closely examine the purpose of the governmental body and the powers it exercises to determine whether it is a general purpose unit of government. A finding that the body is a general governmental unit invokes strict scrutiny of any denial of equal protection and results in application of the one-person-one-vote

153. *Id.* at 368.
154. *Id.*
155. *Id.* at 369.
156. *Id.* at 368.
157. *See* Note, *Expanding the Special District Exception to the 'One Person, One Vote' Requirement:* Ball v. James, 35 Ark. L. Rev. 702, 720 (1982).

principle. A finding that the body is one of limited purpose invokes the rational relationship analysis which will sustain a denial and dilution of votes in the body's affairs in almost any conceivable scenario. Unfortunately, although the Florida Supreme Court reached a sound result, its examination of the Frontier Acres Community Development District was superficial. The court's decision would have been more cogent had it included analysis like that conducted by the Supreme Court in similar cases.

Typically, the Supreme Court examines in detail the powers of a governmental unit that impact on the quality of life or control individual conduct.[158] In *Ball*, the Court went so far as to list the powers the Salt River district could not exercise, thereby implicitly defining those powers that would be considered general governmental powers.[159] Those powers include the power to control public conduct by law and to administer typical governmental functions, such as operating schools, maintaining streets, and providing health, welfare, and safety services.[160] Powers such as these, resting at the core of sovereignty, are deemed sufficient to invoke equal protection standards.[161] When they are absent, the Court is more likely to find that the governmental entity fits within the exception to the one-person-one-vote rule. In *Salyer Land Co.*, the Court concluded that the irrigation district's limited services and absence of general governmental powers meant that it did not supply services that significantly affected its residents' quality of life.[162]

The Florida Supreme Court's analysis, by contrast, was based on a finding that the Frontier Acres district had the narrow purpose of providing needed community development services and facilities to accommodate new growth while ensuring that those who benefited most from the services bore most of the cost.[163] But in determining whether the Frontier Acres district's elections should comply with the *Reynolds* rule, the court did not closely examine the

158. *See, e.g., Salyer Land Co.*, 410 U.S. at 728-29. The Court listed the district's powers as the power to hire a staff, to contract for construction of district projects, to condemn property, and to cooperate with other agencies. *Id.* at 728 n.7. Further, the district did not provide general public services, such as schools, housing, transportation, roads, or other services typically financed by a local government. *Id.* at 728-29.

159. *Ball*, 451 U.S. at 366.

160. *Id.*

161. *Id.*

162. *Salyer Land Co.*, 410 U.S. at 729.

163. *Frontier Acres*, 472 So. 2d at 457.

powers the district could exercise nor how those powers might relate to the district's limited purpose.[164]

Some powers vested in community development districts under Florida law—for example, the authority to build and maintain roads[165]—resemble powers which the Supreme Court has suggested are municipal powers. In *Salyer Land Co.* and *Ball*, road construction and maintenance were described as general governmental powers.[166] Similarly, community development districts can construct and operate sewage waste collection systems.[167] In *Ball*, this task was suggested to be a typical governmental function.[168] A determination that a limited purpose government exercised one or more of these powers could arguably cause it to be subject to the one-person-one-vote principle. Rather than address the constitutional implications of this grant of power to the district, however, the Florida Supreme Court summarily concluded that the district's powers were not sufficient to require adherence to *Reynolds*.[169]

When the powers of a community development district are viewed within the context of the entity's purpose, it seems fair to say that the district does not independently exercise general governmental powers that implicate the equal protection clause. Arguably, the Frontier Acres district could be said to provide directly municipal services that improve the quality of life for all residents, and therefore the one-person-one-vote principle should govern district elections. However, the district in fact only provides a means to finance and construct facilities that the local government could have required the developer to provide if the land had been developed without the benefit of a community development district. A community development district must comply with growth plans adopted by the popularly elected local government.[170] Thus, the actual decisions regarding the quality of life in the district are made by that general governmental body; a community develop-

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164. *Cf. Ball*, 451 U.S. at 366; *Salyer Land Co.*, 410 U.S. at 728-29.

165. FLA. STAT. § 190.012(1)(c) (1985).

166. *Ball*, 451 U.S. at 366 ("[N]or does . . . [the district] administer such normal functions of government as the maintenance of streets."); *Salyer Land Co.*, 410 U.S. at 728-29 ("The district provides no other general public services such as . . . transportation . . . [or] roads.").

167. FLA. STAT. § 190.012(1)(b) (1985).

168. *Ball*, 451 U.S. at 366.

169. *Frontier Acres*, 472 So. 2d at 457. The Court concluded that the district's powers merely implement the narrow purpose the legislature granted the district, that of ensuring that new residents have adequate community services. *Id.*

170. FLA. STAT. § 190.004(3) (1985).

ment district therefore does not improve the quality of life for its residents.

Moreover, the community development district's activities have a disproportionate impact on landowners in the district. As the Florida Supreme Court concluded, the costs of district operations are borne initially by the district landowners.[171] In a community development district such as Frontier Acres, there will be few, if any, residents in the district during the initial years of the development. Thus, the costs of repaying any district bonds through special assessments will be carried by the landowners in the district in proportion to the extent their land is benefited.[172] Additionally, in the early stages of development there would be few or no residents of the district to participate in district elections. Thus, from a practical point of view, to hold an election in which only residents could vote would mean holding an election in which there could be no eligible voters.

The Florida Legislature recognized that the nature of community development districts changes over time. The ultimate conversion of district elections from per acre to per person voting demonstrates a perception that the impact of a district does not continue to affect landowners disproportionately. At some point in time, the effects of district operations and financing must be felt by all residents of the district, not just landowners. The district is no longer a business entity that is a nominal public agency created to benefit landowners. It becomes a body affecting the interests of all residents, regardless of whether they own property. This approach is consistent with the view taken by several western courts when the effects of irrigation districts began to affect nonlandowners to a greater extent than when the district was first created.[173] The *Frontier Acres* court found this temporary exclusion to be valid, and it pointed to the conversion in district elections as further justification for a relaxed equal protection standard. This statutory change helped the court avoid the question of whether an indefinite one-acre-one-vote scheme would have been valid.

V. CONCLUSION

The limited purpose government exception to the one-person-one-vote rule may be unsettling to those who view the franchise as

171. *Frontier Acres*, 472 So. 2d at 457.
172. FLA. STAT. § 190.022 (1985).
173. *See Choudhry*, 552 P.2d 438; *Lewiston Orchards Irrigation Dist.*, 584 P.2d 646.

a fundamental right that must be protected against any infringement. However, the Supreme Court has consistently recognized that there are limits to this principle. In *Salyer Land Co.* and *Ball*, the Court broadly defined that limit and refused to require equal apportionment and a universal franchise in elections for governmental bodies that fulfilled a narrow purpose and disproportionately affected certain persons. Such an exception was upheld for single-purpose irrigation districts which served large areas in western states.

In *Frontier Acres*, the Florida Supreme Court was asked to decide whether a state law could exclude nonlandowning residents from voting for supervisors of a community development district. The court said such residents could be excluded given the limited purpose the districts were created to serve. However, the court failed to examine closely the powers of the district administrators before deciding that community development districts were limited purpose districts. In spite of this shortcoming, the result would have been the same if the court had considered the district's powers. For in the end, the court would have concluded that this was not a general purpose government, but merely a business masquerading as a public body in order to take advantage of lower interest rates on public bonds.

Douglas S. Roberts