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LOCAL REAPPORTIONMENT: THE EXEMPTION OF WATER MANAGEMENT DISTRICTS

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INTRODUCTION

In 1962 a new era dawned in American constitutional law when the Supreme Court renounced its longstanding practice of classifying issues concerning legislative representation as political questions subject to the doctrine of judicial self-restraint.[1] Once the decision was made to give the courts jurisdiction over matters of reapportionment the next step was to determine which governmental entities were affected by this ruling and to devise a formula for equitably allocating district representation in legislative bodies. The first solutions to these problems were announced two years later when it was declared that the national House of Representatives[2] and state legislatures[3] must be apportioned according to the "one man, one vote" principle.

Defining this guideline in the case of *Reynolds v. Sims*, the Supreme Court declared that in accord with the Constitution a state must "make an honest and good faith effort to construct districts in both houses of its legislature, as nearly of equal population as is practicable."[4] Flexibility was not ruled out, however, because it was recognized that arranging a perfect balance in population among legislative districts was neither feasible nor required by the Constitution. Although the basis for achieving equality in national and state legislatures was established by the *Reynolds* standard, its application to local government remained uncertain for several more years.

When the first local reapportionment cases came before the Supreme Court in 1967,[5] the results were disappointing because

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1. Baker v. Carr, 369 U.S. 186 (1962).
2. Wesberry v. Sanders, 376 U.S. 1 (1964).
3. Reynolds v. Sims, 377 U.S. 533, 534 (1964).
4. *Id.* at 577.
5. For a detailed analysis of the local reapportionment cases decided from 1967-1970, see Martin, *The Supreme Court and Local Reapportionment: The Third Phase*, 39 GEO. WASH. L. REV. 102 (1970).

the matter of inclusion under the aegis of *Reynolds* was left unanswered. All that the Court decided was to exempt appointed administrative boards from the equality theorem[6] and to approve an electoral scheme combining a district residence requirement with an at-large election for a city council.[7] A ruling made in the following year went farther when it was concluded in the case of *Avery v. Midland County* that "units with general governmental powers over an entire geographic area [must] not be apportioned among single-member districts of substantially unequal population."[8] Thus, the mandate of "one man, one vote" was extended to cities, counties and towns, but the question of whether a locally elected administrative board or commission is subject to the same standard was postponed. It was noted, however, that a special purpose government unit could conceivably have different impacts on definable groups among its constituents.[9] In the event this situation should exist, it was implied that those constituents who were most affected by the unit's performance of its functions might be entitled to influence commensurate with their greater interest in the operation of the special district.

Two years later this proposition was partially answered as local governments of special powers were included under the *Reynolds* concept in the decision of *Hadley v. Junior College District.*[10] In this case the Supreme Court attempted to clarify the issue of the applicability of the *Reynolds* doctrine by announcing a general formula pertaining to all elective governing bodies in the United States. The Court required that regardless of what kind of government is involved, when its legislature is elected by districts, all voters are constitutionally guaranteed a vote of equal value.[11] In other words an equal number of representatives will be elected from districts of proportionately equal population, and there will be no legal barriers against equal participation by all voters. This was not, however, an unqualified rule, as several exceptions were specified.

An imposing influence on the formulation of the caveats in the *Hadley* decision was undoubtedly the cogent dissent registered by Justice Harlan. He contended that special governments should be treated separately because the basis for their creation is to provide a specialized function which is conditioned by the particular needs of a locality.[12] Moreover, it was emphasized that units,

6. Sailors v. Board of Educ., 387 U.S. 105 (1967).
7. Dusch v. Davis, 387 U.S. 112 (1967).
8. 390 U.S. 474, 485-86 (1968).
9. *Id.* at 483-84.
10. 397 U.S. 50, 54 (1970).
11. *Id.* at 56.
12. *Id.* at 60-61 (dissenting opinion).

from air pollution control agencies to irrigation districts to school districts, have different impacts on the various citizens whom they serve. These differing impacts are reflected in diverse patterns of representation on the governing boards and in dual policies of taxation. In some areas of the nation the traditional axiom equating representation with taxation has been officially adopted with the result that those people who receive the greatest benefit from a special government pay more taxes and, accordingly, are given more representation or voting power than other residents. The *Hadley* majority rejected a rule which would have allowed a local governmental unit possessed with general powers to be apportioned in accord with its impact upon various constituencies.[13] Nevertheless, consideration of such impact has been incorporated into equal apportionment exemptions whose importance has been demonstrated in two recent cases in California and Wyoming, *Salyer Land Co. v. Tulare Water District*[14] and *Associated Enterprises, Inc. v. Toltec Watershed Improvement District.*[15]

The controversies in these cases center on the same considerations noted in Justice Harlan's dissent in *Hadley*. In each instance the concern is with the constitutionality of allocating political power on the basis of economic wealth inasmuch as the impact of what the government does varies according to how much acreage or land value is owned. This electoral scheme, of course, results in some citizens being denied the right to vote, while others who are franchised cast a ballot of less weight than wealthier voters. In both the *Salyer* and *Toltec* cases the Supreme Court was confronted with the problem of determining whether the most important aspect of the political process in special districts is guaranteeing voting equity to all citizens or preserving the means by which the unit is financed and governed since some citizens have a greater stake in its performance and policies due to their larger economic interests.

LAND VALUE AND VOTING POWER

Salyer Land Co. v. Tulare Water Storage District

One of the possibilities recognized by the *Hadley* court is that "there might be some case in which a State elected certain functionaries whose duties are so far removed from normal governmental activities and so disproportionately affect different groups that a popular election in compliance with *Reynolds* . . .

13. *Id.* at 54-55.
14. Salyer Land Co. v. Tulare Water Storage Dist., 410 U.S. 719 (1973).
15. Associated Enterprises, Inc. v. Toltec Watershed Improvement Dist., 410 U.S. 743 (1973).

might not be required. . . ."[16] Since the *Hadley* case concerned the election of school district trustees, this form of special government was eliminated as one of the aforementioned possibilities because "[e]ducation has traditionally been a vital governmental function, and these trustees, whose election the State has opened to all qualified voters, are governmental officials in every relevant sense of that term."[17] Aside from this conclusion no other clarification was given for the preceding caveat as the Supreme Court evidently preferred to use the case-by-case approach in ruling on this question.

Prior to the *Salyer* case the only application of the "disproportionate affect" provision was made to the election of judges by districts. Using this standard, along with the belief that apportionment applies only to legislatures, a three-judge federal court ruled that the Louisiana Supreme Court, which is elected from districts of varying populations, is exempt from the "one man, one vote" requirement.[18] In a memorandum decision issued on January 8, 1973 the Supreme Court upheld that lower court's decision, while three justices dissented on the grounds that the *Hadley* qualification did not include the judiciary footnote. However, they did not specify what kinds of governmental arrangements would be affected. Two months later the Supreme Court again considered this issue in a case concerning a water storage district authorized by the State of California.[19]

The particular governmental unit involved in this adjudication contains 193,000 acres of intensively cultivated, highly fertile farm land in the Tulare Lake Basin. Because of perennial difficulties, this kind of special district is empowered to plan and implement projects "for the acquisition, appropriation, diversion, storage, conservation, and distribution of water. . . ."[20] Problems such as these are typical in the western states where the coincidence of melting mountain snows and the spring rainy season create hazardous flood conditions and the hot, dry summer results in drought before the fall rainy season. In the case of the Tulare Water Storage District, the functions are strictly the acquisition, storage and distribution of water for farming.

These functions are administered by a board of directors who are chosen in odd-numbered years in elections in which only agricultural landowners can vote, regardless of where they live.[21] Al-

16. Hadley v. Junior College Dist., 397 U.S. 50, 56 (1970).
17. *Id.*
18. Wells v. Edwards, 347 F. Supp. 453 (M.D. La. 1972).
19. Salyer Land Co. v. Tulare Water Storage Dist., 410 U.S. 719 (1973).
20. CAL. WATER CODE § 42200 *et seq.* (West 1966), *as amended*, CAL. WATER CODE § 42200 *et seq.* (West Supp. 1973).
21. *Id.* § 41001.

though the Tulare District is divided into ten precincts, "[e]ach voter may vote in each precinct in which any of the land owned by him is situated and may cast one vote for each one hundred dollars ($100), or fraction thereof, worth of his land, exclusive of improvements, minerals, and mineral rights therein, in the precinct."[22] Consequently, the lessees of farmlands[23] and the residents of the districts who do not own any agricultural land are disenfranchised, and most of the district's 77 residents are in this category.

Since few of the residents can vote, who are the participants in the district political process? The major ones are four corporations: The Salyer Land Company, South Lake Farms, West Lake Farms, and the J. G. Boswell Company. Together they own 85 percent of the land in the district. The appellees in *Salyer* noted that the J. G. Boswell Co. owns 61,665.54 acres, with an assessed valuation of $3,782,220, which results in Boswell exercising 37,825 votes. As a result, the Boswell Company can win any board election, and, not surprisingly, the last one was held in 1947 because the outcome is a foregone conclusion.[24]

Assailing the scheme by which one corporation is permitted to exercise so much control, the plaintiff contended that limiting the vote to district landowners violates the equal protection clause of the fourteenth amendment inasmuch as nonlandowning residents have as much interest in the decisions and policies of the district government as the landowners who may or may not be residents. It was argued that both parties would have equal concern in operations relating to flood control, in that the homes of nonlandowning residents may be damaged by floods, and floods may result in loss of employment. An example of how interests can conflict occurred in 1969 when 88,000 of the 193,000 acres in the Tulare Lake Basin were inundated. Prior to this episode flood waters were stored in the Buena Vista Lake to the south of the Tulare Basin. In 1969, the Tulare Board of Directors, dominated by the Boswell Company, voted 6-4 to table a motion that would have continued this alternative means of flood control.[25] According to the dissenters in the *Salyer* case, the reason behind the board's action was that the "J. G. Boswell Co. had a long term agricultural lease in the Buena Vista Lake Basin and flooding it would have interfered with the planting, growing, and

22. *Id.*

23. Since the franchise may be exercised by proxy, a lessee may negotiate to have votes included in his lease. CAL. WATER CODE §§ 41002, 41005 (West 1966), *as amended*, CAL. WATER CODE § 41002 (West Supp. 1973).

24. Salyer Land Co. v. Tulare Water Storage Dist., 410 U.S. 719, 735 (1973) (dissenting opinion).

25. *Id.* at 737.

harvesting of crops the next season."[26] Therefore, the decision was made to subject the land of others to menacing flood danger, contrary to the policy which had been used successfully over the years.

In challenging Section 41001 of the California Water Code[27] which limits the vote in a water district to landowners, the plaintiff relied upon previous Supreme Court rulings against allegedly similar restrictions of the franchise. On this question it has been decided that a state cannot limit the vote in school district elections to owners and lessees of real property and parents of school children when there is no state interest to be served by the exclusion of otherwise qualified voters.[28] This ruling was extended to referenda for the approval of revenue bonds to finance local improvements on the grounds that the decision to issue bonds was made by officials who were elected by all the people.[29] The restriction against non-property owners participating in revenue bond elections was held by the Court to be a violation of the equal protection clause since all voters are substantially affected by the issuance of bonds to finance municipal utilities.[30] For the same reason the Supreme Court also included general obligation bonds under the following rule:

> Presumptively, when all citizens are affected in important ways by a governmental decision subject to a referendum, the Constitution does not permit weighted voting or the exclusion of otherwise qualified citizens from the franchise.[31]

The point emphasized by these cases is that the Supreme Court seems to regard the concept of the restricted electorate as being inherently unconstitutional in most instances because it always poses the "danger of denying some citizens any effective voice in the governmental affairs which substantially affect their lives."[32] Acceptance of a restrictive electoral plan seems to be possible only if there is a compelling governmental goal or interest which can be best attained by limiting the franchise. Using this interpretation the plaintiff alleged that the Tulare Water District did not meet the constitutional test inasmuch as neither the administration nor viability of a state policy was dependent upon the unit's operations.

In evaluating the California statutory scheme the Supreme Court first had to define what kind of governmental powers are

26. *Id.*
27. CAL. WATER CODE § 41001 (West 1966).
28. Kramer v. Union Free School Dist., 395 U.S. 621 (1969).
29. Cipriano v. City of Houma, 395 U.S. 701 (1969).
30. *Id.* at 705.
31. Phoenix v. Kolodjiezski, 399 U.S. 204, 209 (1970).
32. Kramer v. Union Free School Dist., 395 U.S. 621, 627 (1969).

exercised by the Tulare Water District. If the district is one of general powers, then the "one person, one vote"[33] principle would apply. On the other hand, if the district performs only special functions, it could be subject to *Hadley*'s disproportionate affect exemption from the *Reynolds* standard of equal representation.[34] Under provisions of the California Water Code a water storage district has some powers normally exercised by governments of general authority. These include: (1) maintaining a staff of professional employees;[35] (2) contracting for the construction of projects;[36] (3) condemning private property for district use;[37] (4) cooperating with federal and state agencies;[38] and (5) incurring indebtedness through issuance of bonds.[39] However, the Supreme Court emphasized that the Tulare District does not provide other types of traditional governmental services such as schools, roads, housing, utilities, police and fire protection or transportation, nor are there any towns or subdivisions to administer these functions within the district. The fact that it does engage in flood control, a governmental activity, was considered by the Court as incidental to the "exercise of the district's primary functions of water storage and distribution."[40] Therefore, the Tulare District was classified as being a government of special powers because it does not perform what are regarded as "normal governmental" duties and functions.

After establishing the character of the water storage district, it next was necessary to determine if the *Hadley* caveat recognizing disproportionate affect would apply in this case. The key factor in this analysis was considered to be the fiscal powers of government. The Supreme Court found that the financial burdens of the district are distributed in the same manner as the right to vote. All project costs are assessed against landowners according to the benefit received, and likewise, the charges for services performed are levied in proportion to the benefit derived by the landowner, and whenever nonpayment occurs, these provisions are enforced by placing a lien on the land.[41] To illustrate how this system works, reference was made to the latest district project which had a capital cost of almost $2,500,000. This expense required an assessment of $13.26 per acre. Consequently,

33. Presumably, in deference to the equal rights movement for women, the Supreme Court has modified the *Reynolds* principle to "one person, one vote."

34. Hadley v. Junior College Dist., 397 U.S. 50, 56 (1970).

35. CAL. WATER CODE § 43152 (West 1966).

36. *Id.*

37. CAL. WATER CODE §§ 43530-43533 (West 1966).

38. *Id.* § 43151.

39. *Id.* § 44900.

40. Salyer Land Co. v. Tulare Water Storage Dist., 410 U.S. 719, 728 n.8 (1973).

41. CAL. WATER CODE §§ 47183, 46280 (West 1966).

the total amount collected from 3 landowners, each of whom is entitled by valuation to one vote, was $46. In contrast, the Boswell Co., which has 37,825 votes, paid $817,685.[42]

In assessing the rationale behind the California policy, the Supreme Court assumed that it was enacted in order to facilitate the organization of water storage districts, reasoning that unless they had a dominant voice in the district's operations the landowners would never have agreed to its organization.[43] Allegedly, any alternative permitting full participation in district governance would not have been feasible. This interpretation was defended on the grounds that:

> Since the subjection of the owners' lands to . . . [assessments] was the basis by which the district was to obtain financing, the proposed district had as a practical matter to attract landowner support. Nor, since assessments against landowners were to be the sole means by which the expenses of the district were to be paid, could it be said to be unfair or inequitable to repose the franchise in landowners but not residents. Landowners as a class were to bear the entire burden of the district's costs, and the State could rationally conclude that they to the exclusion of residents should be charged with responsibility for its operations.[44]

Therefore, the *Hadley* caveat was ruled applicable to the California water storage districts because they are special units of government whose functions have a disproportionate affect upon different groups within their jurisdiction. As a result, voting equality in accordance with the *Reynolds* standard is not required for such governments.[45]

Writing for the majority, Justice Rehnquist averred that the California system was also constitutionally justifiable because it provided a sufficient safeguard for minority interests in its project decision making process. After a district proposes a project, it must first be approved by the California Department of Water Resources.[46] Next, a report detailing the estimated cost of the project must be submitted to the state treasurer who conducts an independent investigation for the purpose of approving or reject-

42. Salyer Land Co. v. Tulare Water Storage Dist., 410 U.S. 719, 734 (1973).

43. According to municipal law, a special district generally is not created arbitrarily by a state but, rather, it is established at the request and/or consent of voters. This point is involved in Associated Enterprises, Inc. v. Toltec Watershed Improvement Dist., 410 U.S. 743 (1973). *See* notes 60-67 *infra.*

44. Salyer Land Co. v. Tulare Water Storage Dist., 410 U.S. 719, 731 (1973).

45. The complaint against lessee disfranchisement was also dismissed since it was not an absolute restriction. *See* note 23 *supra.*

46. CAL. WATER CODE § 42200 *et seq.* (West 1966), *as amended,* (West Supp. 1973).

ing the report.[47] If the proposal is accepted, a special election is then held in the district,[48] and adoption of a project requires approval by a majority of the total votes assigned to the landowners *and* by a majority of the eligible voters.[49] This requirement of ratification by two majorities was viewed as being especially protective against decisions favorable to the large landowner since in the previously mentioned district project involving the assessment of $13.26 per acre, the project had to be approved by not only a majority of the total votes but also by a majority of the landowners. At that time approximately 190 landowners constituted a majority, and 190 of the smallest landowners in the district controlled only 2.34 per cent of the land. Thus, the Court emphasized that projects could be defeated in this scheme of dual voting by voters who own only a small fraction of the districts acreage.[50] Although the minority interest can be protected in project decision making by the dual vote requirement, the *Salyer* majority failed to take cognizance of how the governing board dominated by a single large landowner can render decisions as to storage of flood waters detrimental to other properties in the district.

It was basically on this issue that three members of the Supreme Court dissented in the *Salyer* case. In their opinion the water storage district performs important governmental functions which have a significant impact throughout the district. In addition to the functions enumerated by the majority opinion[51] and that of flood control, which the three dissenters regarded as more than an incidental function, it was pointed out that this unit of government also has governmental immunity from suit,[52] its works are exempt from taxation,[53] and it has the power of eminent domain.[54] In short the same authority and rights possessed by other units of local government are accorded to water storage districts. It was contended, therefore, that the *Avery* "one man, one vote" principle regarding general purpose governments,[55] not the *Hadley* caveat,[56] should apply in this instance.

Still another objection was raised against the California policy. The dissent considered it "grotesque to think of corporations

47. *Id.* § 42275 *et seq.*
48. *Id.* § 42301(b).
49. *Id.* § 42550.
50. Salyer Land Co. v. Tulare Water Storage Dist., 410 U.S. 719, 723 n.3 (1973).
51. *See* notes 36-39 *supra.*
52. CAL. GOV'T CODE §§ 811.2, 815 (West 1966).
53. CAL. WATER CODE § 43508 (West 1966).
54. *Id.* § 43530.
55. Avery v. Midland County, 390 U.S. 474, 485-86 (1968).
56. Hadley v. Junior College Dist., 397 U.S. 50, 56 (1970).

voting within the framework of political representation of people."[57] The fact that one corporation can outvote 77 people in the Tulare District was asserted to be contrary to anything dreamed of by the Founding Fathers in 1787. Yet, the dissenters ignored the manner in which assessments are levied for financing projects and the implication of such financing. Presumably, they would not accept any reconciliation of representation and taxation in a special purpose government.

ACREAGE OWNERSHIP AND WEIGHTED VOTING

Associated Enterprises, Inc. v. Watershed Improvement District

The *Hadley* case not only recognized an exception to the *Reynolds* principle arising from a government's disproportionate affect upon different groups but it also mentioned the possibility that "a State may, in certain cases, limit the right to vote to a particular group or class of people."[58] At the time of the *Hadley* decision it was anticipated that among the elections entitled to exemption under the second caveat would be those held for the creation of a new governmental unit such as a special district. In most, if not all, states these subdivisions must be approved by a referendum by the voters who live within the proposed jurisdiction.[59] Moreover, when the services of this kind of government are financed by a special levy upon a particular group, the franchise generally has been limited to those voters.[60] This is the policy prescribed by Wyoming for establishing watershed improvement districts. Thus, the challenge against this procedure parallels the one rejected in the *Salyer* case in that the district electorate consists solely of property owners whose votes are weighted according to acreage.

To initiate the creation of a watershed improvement district, a majority of the affected landowners file a petition specifying the need and size of the proposed unit.[61] Since the new government will operate as a subdivision within the boundaries of an established soil and water conservation district, the petition is submitted to that district's board of supervisors who are required to call a public hearing at which "[a]ll owners of land within the

57. Salyer Land Co. v. Tulare Water Storage Dist., 410 U.S. 719, 741 (1973).
58. Hadley v. Junior College Dist., 397 U.S. 50, 58-59 (1970).
59. BOLLENS, SPECIAL DISTRICT GOVERNMENTS IN THE UNITED STATES 9-15 (1957).
60. The origin and use of this restriction is described in SCOTT AND BOLLENS, SPECIAL DISTRICTS IN CALIFORNIA LOCAL GOVERNMENT 3-4 (1949).
61. Watershed Improvement District Act, WYO. STAT. ANN. § 41-354.5 (1973).

proposed watershed improvement district and all other interested parties shall have the right to attend . . . and to be heard."[62] After reviewing the evidence and testimony presented at the public hearing, the board of supervisors decides if a watershed district is needed or if the petition should be denied.[63] If convinced that there is a need for this unit, the board must then ascertain whether the proposal is "administratively practicable and feasible."[64] In reaching this conclusion, a referendum must be held within the boundaries of the proposed district and only the landowners of the affected area are allowed to vote.[65] If a majority of these landowners, representing a majority of the acreage within the proposed district, approve the plan, then the board of supervisors can decide that the new government is administratively practicable and feasible and declare it to be created.[66]

The Wyoming controversy began in 1970 when the Toltec Watershed Improvement District, established by the referendum procedure outlined above, sought entry onto lands owned by Associated Enterprises, Inc. Associated denied the right of entry on the ground that the Wyoming procedure for creating watershed districts violated the equal protection clause of the fourteenth amendment because the referendum is only open to landowners and the votes are weighted according to the amount of acreage owned.

In a per curiam decision the Supreme Court by a vote of 6 to 3 upheld the Wyoming statute. Relying primarily on its reasoning in the *Salyer* case, the Court emphasized the applicability of the *Hadley* caveats to the watershed government.[67] In addition, the majority noted that the entire process for establishing this subdivision of the soil and water conservation district is managed by the latter's board of supervisors who are popularly elected by both occupiers and owners of land within the (primary) district.[68] Furthermore, it was pointed out that "a precondition to their formation referendum is a determination by a board of supervisors of the affected conservation district . . . that the watershed improvement district is both necessary and administratively practicable."[69] In the same manner that dual voting was regarded

62. *Id.* § 41-354.7(A).
63. *Id.* § 41-354.7(C).
64. *Id.* § 41-354.8.
65. *Id.* § 41-354.9(B).
66. *Id.* § 41-354.10.
67. *See generally* BOLLENS, SPECIAL DISTRICT GOVERNMENTS IN THE UNITED STATES 9-15 (1957).
68. Associated Enterprises, Inc. v. Toltec Watershed Improvement Dist., 410 U.S. 743, 744-45 (1973).
69. *Id.*

as an equal rights guarantee in the *Salyer* case,[70] the Supreme Court appeared to consider the participation of the board of supervisors of the soil and water conservation district as a protection against arbitrariness or minority control and favoritism.

The dissenters particularly disagreed with this last point in the *Toltec* case because, unlike California,[71] Wyoming does not provide for the transfer of votes by a property owner to a lessee. Writing again for the minority, Justice Douglas thought that this omission was anomalous inasmuch as the Watershed Improvement District Act recognizes the nonlandowners' interest in the proposed creation of this unit by specifying their right to attend and be heard at the public hearing held before the formation referendum.[72] No reason was given for extending to the nonproperty owner the right to a public hearing while excluding him from expressing his opinions through a ballot, and thus the dissenters speculated that land management in Wyoming was vested in the "wealthy few."[73] Such a policy, it was contended, is contrary to *Reynolds v. Sims* and its progeny which hold that "important governmental functions may not be assigned to special groups, whether powerful lobbies or other discrete groups to which a state legislator is often beholden."[74]

To support this point, the categorization of the subdistrict by the majority was attacked as erroneous because the dissenters believed that a watershed district does perform "important governmental functions" in that it may: levy and collect special assessments;[75] acquire and dispose of property;[76] exercise the power of eminent domain;[77] borrow money and issue bonds;[78] and provide plans for flood control.[79] Consequently, there was a reiteration of the *Salyer* dissent in that the *Avery* principle[80] and not the *Hadley* caveats[81] were deemed controlling in regard to watershed improvement districts.[82]

In discussing the concept of "important governmental func-

70. Salyer Land Co. v. Tulare Water Storage Dist., 410 U.S. 719, 723 n.3 (1973).

71. *See* note 23 *supra.*

72. Associated Enterprises, Inc. v. Toltec Watershed Improvement Dist., 410 U.S. 743, 745-46 n.1 (1973) (dissenting opinion).

73. *Id.* at 746.

74. *Id.* at 751 (dissenting opinion).

75. Watershed Improvement Act, WYO. STAT. ANN. § 41-354.13(A) (1973).

76. *Id.* § 41-354.13(B).

77. *Id.* § 41-354.13(C).

78. *Id.* § 41-354.13(E).

79. *Id.* § 41-354.2.

80. Avery v. Midland County, 390 U.S. 474, 485-86 (1968).

81. Hadley v. Junior College Dist., 397 U.S. 50, 58-59 (1970).

82. Associated Enterprises, Inc. v. Toltec Watershed Improvement Dist., 410 U.S. 743, 748-49 (1973) (dissenting opinion).

tions" an effort was made to provide more currency for this argument by the addition of an environmental argument which had not received attention in the *Salyer* case. In this respect the dissent stated that while serving its electorate (the landowners) the district could abuse the public interest in the following way:

> . . . its power to reshape or control the watershed and to provide flood control enables it to turn rivers into flumes or to destroy them by erecting dams to build reservoirs. Dams may be vital or they may be disastrous. . . . Dams substitute a reservoir for a river and wipe out the varied life of a river course, including its wildlife, canoe waters, camping and picnic grounds, and nesting areas of birds. This reshaping of the face of the Nation may be disastrous, no matter who casts the ballots. The enormity of the violation of our environmental ethics, represented by state and federal laws, is only increased when the ballot is restricted to or heavily weighted on behalf of the few who are important only because they are wealthy.[83]

Responding to this charge, the *Toltec* majority rejected the notion of a predominant public interest by noting that "[t]he statute authorizing the establishment of improvement districts was enacted by a legislature in which all of the State's electors have the unquestioned right to be fairly represented."[84]

CONCLUSION

After comparing the California and Wyoming cases, it is apparent that the crux of the controversy is the degree to which the presumptively eligible public—all those who reside in the contemplated district—can be allowed to participate in elections having at least some indirect effect upon them while maintaining a prerogative for the traditional concept of property rights. A majority of the current Supreme Court obviously desires to continue enforcing the principle of balancing representation with taxation as long as the public interest is procedurally protected. In the *Salyer* ruling the requirement of dual voting was accepted as providing due process of law for all concerned parties.[85] In the *Toltec* decision the Supreme Court's majority interpreted the law as meaning that the board of supervisors of the soil and water conservation district could refuse to call for the formation referendum if, in their opinion, the proposed watershed district is not "administratively necessary and practicable."[86]

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83. *Id.*
84. *Id.* at 744-45.
85. *See* notes 36-39 *supra.*
86. Associated Enterprises, Inc. v. Toltec Watershed Improvement Dist., 410 U.S. 743, 745 (1973).

Although they did not discuss the issue of procedural safeguards in the *Salyer* case, the dissenters disagreed with the majority's interpretation of the Wyoming policy in the *Toltec* decision. In the view of Justice Douglas and his colleagues the law requires that after a petition had been properly filed, "a referendum *must* be held in the proposed district" regardless of the board's evaluation of administrative feasibility.[87] Therefore, the Court's minority contended that there was no procedural safeguard to protect the public interest. Unfortunately, the Wyoming law does not seem to provide any clarification on this question.

Conflicting alternative statutory meanings such as the one in the preceding paragraph complicate the adjudication of local government reapportionment. In fact the Supreme Court has found the problems of local representation far more difficult to resolve than those it has encountered at the federal and state levels. It has even been argued that this entire level of government involves such complex policy interests that it should thereby be excluded from reapportionment requirements.[88] Justice Fortas, dissenting in *Avery v. Midland County*,[89] endorsed the *Reynolds* concept as a guideline for calculating representation in the national House of Representatives and in state legislatures, but he doubted its feasibility for districting a state's subdivisions. The basis for his distinction was that the actions of a state legislature similarly affect the people of a state. In contrast, Justice Fortas emphasized that the functions of county government generally do not have the same impact on all constituents. If the impact is equal, then, he asserted that the "one man, one vote" principle would be applicable.[90]

No matter what the level of government, one authority has perceived that the "real issue posed by the reapportionment revolution is the *equalization of citizen influence on legislative outcomes*. . . ."[91] This, of course, is particularly true at the local level where patterns of representation are varied. Why has local government developed different systems of representation? Part, if not all, of the answer can be found in historical necessity. For example, over seventy-five years ago the Supreme Court recognized the unique situation of western states in dealing with the problems of water distribution. Thus, it upheld a California law which provided for the organization and government of irrigation

87. *Id.* at 746 n.1.

88. Avery v. Midland County, 390 U.S. 474, 490-91 (1968) (dissenting opinion).

89. 390 U.S. 474 (1968).

90. *Id.* at 499-509 (dissenting opinion).

91. Dixon, *Local Representation: Constitutional Mandates and Apportionment Options*, 36 GEO. WASH. L. REV. 694, 711 (1968).

districts against claims of denial of due process under the fourteenth amendment.[92] Although many variations of local apportionment have been approved in the past, the reapportionment revolution has raised questions about representation which, in a day of ecological concern, needs to be re-examined.

The "one person, one vote" philosophy now pervades all levels of government. The Supreme Court, however, is not the institution to answer these questions. As Justice Frankfurter stated in his dissent in *Baker v. Carr*: "[e]ven assuming the indispensable intellectual disinterestedness on the part of judges in such matters, they do not have the accepted legal standards or criteria or even reliable analogies to draw upon for making judicial judgments."[93]

Following its reconsideration of *Abate v. Mundt*,[94] declaring local government to be an exception to the mathematical stringency of "one person, one vote,"[95] *Mahn v. Howell*,[96] exempting state legislative apportionment from the same rigorous requirement, and *Gaffney v. Cummings*[97] completing the cycle by exempting congressional representation, the Supreme Court will probably continue a "hands-off" policy for special districts such as those involved in the *Salyer* and *Toltec* cases. Clearly, these controversies concern citizens who are aggrieved over a decision in which they feel they have had no part. But seminal power for such decisions is derived from larger governmental units which *are* elected by all citizens irrespective of whether or not they own land or own it in specific quantities. It is in these general power units of government that solutions to problems can best be worked out through bargaining among competing political interests. One can hope that if the political arm of government is given another chance there will not be the legislative abnegation of responsibility which originally resulted in the Supreme Court becoming involved in the reapportionment process.

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92. Fallbrook Irrigation Dist. v. Bradley, 164 U.S. 112 (1896).
93. 369 U.S. 186, 268 (1962) (dissenting opinion).
94. 403 U.S. 182 (1971).
95. This change in rulings is analyzed in Martin, *The Constitutional Status of Local Government Reapportionment*, 6 VAL. L. REV. 237 (1972).
96. 410 U.S. 315 (1973).
97. 412 U.S. 735 (1973).