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Voting Rights: Limitations on the Franchise Based on Property Ownership in General Obligation Bond Elections

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charged with crimes a speedy trial. In the words of Justice Brennan, "the speedy trial guarantee should receive a more hospitable interpretation than it has yet been accorded."[36]

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VOTING RIGHTS: LIMITATIONS ON THE FRANCHISE BASED ON PROPERTY OWNERSHIP IN GENERAL OBLIGATION BOND ELECTIONS

Pursuant to statutory provisions,[1] only real property taxpayers were permitted to vote in an election to authorize the issuance of general obligation and revenue bonds which were to be secured by property tax revenues.[2] The appellee, a nonfreeholder, challenged the constitutionality of this voting restriction and attacked the validity of the election. A three judge federal district court declared the election unconstitutional, enjoining the issuance of the approved bonds.[3] On appeal, the Supreme Court of the United States *held*, affirmed: The challenged provisions of the Arizona Constitution and statutes, when applied to exclude nonproperty owners from voting for the approval of the issuance of general obligation bonds, violate the equal protection clause of the United States Constitution.[4] *City of Phoenix v. Kolodziejski*, 399 U.S. 204 (1970).

The right to vote in state elections, though fundamental, is not expressly guaranteed by the United States Constitution.[5] However, the states are limited somewhat as to their power to establish voter qualifications,[6] and limitations on the right to vote based on property owner-

36. Dickey v. Florida, 398 U.S. 30, 57 (1970) (concurring opinion).

Subsequent to the writing of this note, the trend has been in the direction of the establishment of court made rules of procedure which generally prescribe that the defendant must be tried within six months of arrest. *See, e.g., Second Circuit Rules Regarding Prompt Disposition of Criminal Cases*, 434 F.2d Advance Sheet No. 2 p. LI (1971). *See also* FLA. R. CRIM. P. 1.191 (1971), which provides, among other things, that a person charged with a misdemeanor be tried within 90 days from the time such person is taken into custody; that a person charged with a felony be tried within 180 days from the time such person is taken into custody; and that any person charged with any crime, upon *demand*, be brought to trial within 60 days of the filing of the demand.

1. ARIZ. CONST. art. 7, § 13 and art. 9, § 8; ARIZ. REV. STAT. ANN. §§ 9-523, 35-542 (1956); ARIZ. REV. STAT. ANN. § 35-455 (Supp. 1969).

2. The general obligation bonds were to be issued to finance municipal improvements. Under Arizona law, the city was legally privileged to use other revenues for this purpose.

3. City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970).

4. The rule announced was to be applied prospectively only, but was applicable in this case since the suit was brought within the prescriptive period (5 days) for challenging the election pursuant to ARIZ. REV. STAT. ANN. § 16-1202 (Supp. 1969).

5. At the time the constitution was ratified, the majority of the states imposed property qualifications to exercising the voting franchise. K. PORTER, A HISTORY OF SUFFRAGE IN THE UNITED STATES 110 (1918).

6. The states are prohibited from discriminating because of race, U.S. CONST. amend. XV; sex, U.S. CONST. amend XIX; or ability to pay poll tax, U.S. CONST. amend. XXIV.

ship have frequently been declared unconstitutional.[7] At the time of this writing, only thirteen states[8] still restrict the franchise to property owners in general obligation bond elections.

Two separate tests have been applied to determine whether voting requirements are a denial of equal protection.[9] Traditionally, the question was whether there was a rational basis for the classification.[10] The departure from the traditional view began with the 1964 apportionment case of *Reynolds v. Sims*[11] wherein the Court stated that the equal protection clause demanded that statutes denying the exercise of the franchise to some and extending it to others must be carefully and meticulously scrutinized to determine whether they further a *valid state interest*.[12] The landmark poll tax case of *Harper v. Virginia Board of Electors*[13] was the first non-apportionment case to employ the broader and more subjective "valid state interest" test to determine whether the tax violated the equal protection clause.[14] This stricter test was also applied in *Kramer v. Union Free School Dist. No. 15*.[15]

> If a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the court must determine whether the exclusions are necessary to promote a compelling state interest.[16]

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7. *See, e.g.*, Cipriano v. City of Houma, 395 U.S. 701 (1969); Kramer v. Union Free School Dist. No. 15, 395 U.S. 621 (1969); Harper v. Virginia Board of Electors, 383 U.S. 663 (1966).

8. Arizona, Alaska, Colorado, Idaho, Louisiana, Michigan, Montana, New Mexico, New York, Oklahoma, Rhode Island, Texas and Utah limit the franchise to property owners. City of Phoenix v. Kolodziejski, 399 U.S. 204, 213 n.11 (1970).

9. For a detailed discussion of these two standards, see Note, *Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065, 1076-1133 (1969).

10. *See, e.g.*, McGowan v. Maryland, 366 U.S. 420 (1961), wherein the Court said statutory discrimination will not be set aside if any facts may be conceived to justify it. By applying the "traditional test" the court concluded that Maryland's Sunday Closing Laws did not violate the equal protection clause.

11. 377 U.S. 533 (1964). Voters in several Alabama counties attacked the apportionment of the Alabama legislature alleging it deprived them of equal protection of the law under the U.S. Constitution. The Court held that representatives of both houses must be apportioned by population.

12. *See also*, Cipriano v. City of Houma, 395 U.S. 701 (1969) and Kramer v. Union Free School Dist. No. 15, 395 U.S. 621 (1969).

13. 383 U.S. 663 (1966).

14. In Harper v. Virginia Board of Electors, 383 U.S. 663 (1966), the court declared that

> a state violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax.

Id. at 666.

15. 395 U.S. 621 (1969). In *Kramer*, a thirty one (31) year old bachelor living with his parents was denied the right to vote for the school board pursuant to New York law which required an otherwise qualified voter to own or lease real property or be the parent or guardian of a child in school. The United States Supreme Court held that the requirements were a denial of equal protection.

16. *Id.* at 627.

Where the more stringent standard is applied, the franchise restriction must promote a compelling state interest if it is to subordinate the individual's right to vote. Though it was conceded that a state may under some situations limit the franchise,[17] in the instant case, such a restriction of the voting franchise was a denial of equal protection.

In a companion case decided the same day, *Cipriano v. City of Houma*,[18] a Louisiana statute,[19] which limited the vote to property tax payers in an election to approve the issuance of revenue bonds,[20] was found to violate the fourteenth amendment. Both *Kramer* and *Cipriano* were explicitly limited to their facts so that the Court left unanswered the question of whether the state's purpose in limiting the franchise to those primarily interested is, itself, a compelling state interest.[21]

Two state decisions that followed *Kramer* and *Cipriano* utilized the "compelling state interest" test to justify excluding those not "primarily interested" from voting.[22] In *Muench & Taylor v. Paine*[23] nonproperty owners as a class were held to be substantially less affected by the outcome of a general obligation bond election than are property owners;[24] consequently, the class distinction was not violative of the equal protection clause. Similarly, in *Settle v. City of Muskagee*,[25] a voting restriction was upheld which limited the vote to property taxpayers who were "primarily interested" and this promoted a compelling state interest.[26]

The question facing the Court in the instant case was whether a state could restrict the vote to real property taxpayers in an election to approve the issuance of general obligation bonds.[27] In an opinion which relied heavily on *Kramer* and *Cipriano*, these restrictions were declared

17. The Court conceded that there may be circumstances wherein a franchise could be limited but failed to enunciate any such situation since the facts in the instant case would not justify any franchise restriction. The author queries whether there could ever be a circumstance where the franchise could be limited.

18. 395 U.S. 701 (1969).

19. LA. STAT. § 39:501 (1950).

20. These bonds were for the purpose of improving public utilities. The Court reasoned that since everyone used utility services, persons who do not own property are similarly interested in the issuance of these revenue bonds.

21. Cipriano v. City of Houma, 395 U.S. 701, 704 n.5 (1969).

> [A]s in Kramer v. Union Free School District. No. 15, supra, we find it unnecessary to decide whether a state might, in some circumstances limit the franchise to those 'primarily interested.'

22. The use of this test is unpredictable since the outcome depends upon how much more of an interest one class of voters must possess over another before they are "primarily interested."

23. 93 Idaho 473, 463 P.2d 939, (1970).

24. The court distinguished *Kramer* and *Cipriano* by stating that in the latter cases it was not possible to say that the excluded class of voters was substantially less interested in or affected by the election than the included class.

25. 462 P.2d 642 (Oklahoma, 1969).

26. The court conceded the fact that nontaxpayers are to some extent interested and affected by reason of the city incurring indebtedness to finance a public utility, but this interest was not "substantial" enough.

27. The application of *Kramer* and *Cipriano* to the instant case dictated a similar result where nonproperty owners were excluded from voting for the approval of general obligation bonds.

unconstitutional as violative of the equal protection clause of the fourteenth amendment. "The differences between the interests of property owners and the interests of nonproperty owners are not sufficiently substantial to justify excluding the latter from the franchise."[28]

Though real property owners may have a somewhat different interest than that of nonproperty owners in the issuance of general obligation bonds,[29] the existence of this difference is no basis for assuming that nonproperty owners will not be substantially affected by the outcome of the election. Nonproperty owners will in effect also be paying a portion of the taxes to finance the general obligation bonds through higher rents and prices for goods and services.[30]

In the author's opinion, the effect of the instant case will be to eliminate property ownership limitations on the right to exercise the voting franchise. The question posed in *Kramer* and *Cipriano* appears to be resolved. Limiting the franchise to those primarily interested is *not* a compelling interest because "when all citizens are affected in important ways by a governmental decision . . . the Constitution does not permit weighted voting or the exclusion of otherwise qualified citizens from the franchise."[31] The United States Supreme Court has yet to allude to a situation in which limiting the voting franchise to a certain class of voters might further a compelling state interest. Furthermore, when applying the stricter "valid state interest" test to determine the constitutionality of voter qualifications, most classifications will inevitably fall since the excluded class of voters can usually show an interest in any election and that they will be affected to some degree by the outcome.

SUSAN GOLDMAN

RESIGN TO RUN: A QUALIFICATION FOR STATE OFFICE OR A NEW THEORY OF ABANDONMENT?

The plaintiff, a Florida Circuit Judge whose term did not expire for three years, intended to run for the office of Justice of the Florida Supreme Court. He was informed by the Florida Secretary of State, that

28. City of Phoenix v. Kolodziejski, 399 U.S. 204, 209 (1970).

29. General obligation bonds may be described as a lien on property within the municipality since the issuers must levy sufficient taxes to service the bonds.

30. Several reasons were set out by the Court to show how non-property holders are affected by the outcome of general obligation bond elections:

a. All residents of Phoenix are affected by this election since it is to finance public facilities;

b. Although property taxes are initially paid by property owners, this expense is passed on to tenants in higher rents and prices; and

c. Although Arizona law calls for property taxes to service general obligation bonds, other revenues are legally available and will probably be used.

31. City of Phoenix v. Kolodziejski, 399 U.S. 204, 209 (1970).