10-1972

Salyer Land Company v. Tulare Lake Basin Water Storage District

Lewis F. Powell Jr.

No. 71-1456 SALYER v. TULARE Argued 1/8/73

Tentative new: This is for more complicated than Tolster (71-1069) — Calif. leg. is more comprehensive + the facts are more involved.

But I still see no "one man one vote" problem here. It is immaterial whether District is or is not a governmental function. The State has a rational basis for authorizing these Districts. The landowners are primarily interested in benefits & burdens (landowners) could impose taxes on land, the landowners would not want the Dist.

Green (for appellants) (Rocky Mount, Va)

Governmental nature of District settled, he argues, by decisions below

There are 77 residents.

Calif. Code requires that elections be held in according with law. But no motive for elections in this District as outcome is predictable.

Atty Gen. opinion: water storage districts in Calif. are "political subdivisions of the State" (see Appendix 17).

These Dist. have power of eminent domain, may impose tax liens

Green distinguishes Wyom. case (71-1069) on ground that S/Ct of Wyom held District there was not a political subdivision

The District's most imp. function is "flood control" — these people are interested.

Prevention of floods was one of stated purposes in the original enabling leg.

Calif statutes passed in 1921. Calif S/Ct in 1923 sustained validity

Major floods in recent years have led to much litigation. In 1969, 88,000 acres were flooded — when snow melts. Can ascertain in advance when flood will occur.

Three of sub-districts petitioned the District to allow flood water to go into Buena Vista Lake. J. T. Boswell Co controlled the Boards (see A 48) — its directors tabled the motion. A serious flood occurred — fortunately the levees held. But people & their homes were endangered.

Newell (for Tulare)

He disagrees strongly with Gulick's analysis.

A District can act only as a District project.

Calif. has provided protections for small land owners.

The state doesn't thrust this classification upon citizens. A group of citizens elects to band together for a common purpose. E/P Clause should not apply to this.

Newell (cont.)

appellants claim discrimination against (i) lessees & (ii) non land owners.

There are only 77 people. All but 11 of them are employed by the landowners.

The Calif. purpose is to encourage districts like this. State has an interest in improving irrigation and productivity of land. State encourages landowners to incur substantial sums of money to improve their land.

Eminent domain is not necessarily indicative of govt action – or private interests have right.

No. 71-1456 Salyer Land Co. v. Tulare Conf. 1/11/73

Affirmed 7 to 1

DOUGLAS, J. Reverse Flood control affects many people This is stronger case than Toltec	MARSHALL, J. Affirm (tentative)
BRENNAN, J. Reverse (Undecided)	BLACKMUN, J. Affirm
STEWART, J. Affirm	POWELL, J. Affirm
WHITE, J. Affirm	REHNQUIST, J. Affirm

MEMO: C/J affirm
Same as Toltec

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 13, 1973

Re: No. 71-1456 - Salyer Land Co. v. Tulare Lake Basin Water Storage District

Dear Bill:

While my conference vote was to affirm in this case further research has shaken my vote. I am now convinced that the Water Storage District here involved is more "governmental" than I realized. In the second place, I cannot join your opinion because I am not in agreement with your interpretation of our prior cases and, in particular, Phoenix, Cipriano and Kramer. I, therefore, will wait for Brennan's dissenting opinion before finally coming to rest.

Sincerely,

T.M.

Mr. Justice Rehnquist

cc: Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

February 15, 1973

Re: No. 71-1456, Salyer Land Company v.
Tulare Lake Basin Water Storage District

Dear Bill,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

Changes throughout

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

3rd DRAFT

From: Douglas, J.

Circulated: _____

Recirculated: 2-20-73

SUPREME COURT OF THE UNITED STATES

No. 71-1456

Salyer Land Company et al., Appellants, v. Tulare Lake Basin Water Storage District.

On Appeal from the United States District Court for the Eastern District of California.

[February —, 1973]

MR. JUSTICE DOUGLAS, dissenting,

The vices of this case are five-fold.

First. Nonresidents who own land in this water district are allowed to vote for directors who determine the policy.

Second. Lessees of farmlands, though residents of the district, are not given the franchise.

Third. Residents who own no agricultural lands but live in the district and face all the perils of flood which the district is supposed to control are disenfranchised.

Fourth. Only agricultural landowners are entitled to vote and their vote is weighted, one vote for each one hundred dollars of assessed valuation as provided in § 41001 of the California Water Code.

Fifth. The corporate voter is put in the saddle.

I

There are 189 landowners who own up to 80 acres each. These 189 represent 2.34% of the agricultural acreage of the district. There are 193,000 acres in the district. Petitioner Salyer Land Company is one large operator, West Lake Farms and South Lake Farms are also large operators. The largest is J. G. Boswell Co. These four farm almost 85% of all the land in the district. Of these J. G. Boswell Co. commands the greatest number of votes, 37,825, which are enough to give it a majority of the board of directors. As a result it is permanently in the saddle. Almost all of the 77 residents of the dis-

trict are disenfranchised. The hold of J. G. Boswell Co. is so strong that there has been no election since 1947, making little point of the California provision in § 41300 of the Water Code for an election every other year.

The result has been calamitous to some, who though landless have even more to fear from floods than the ephemeral corporation.

In *Phoenix* v. *Kolodjieszki*, 399 U. S. 204, 209, we set out the following test for state election schemes which selectively distribute the franchise:

> "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."

Provisions authorizing a selective franchise are disfavored, because they "always pose the danger of denying some citizens any effective voice in the governmental affairs which substantially affect their lives." *Kramer* v. *Union Free School District*, 395 U. S. 623, 627. In order to overcome this strong presumption, it had to be shown up to now (1) that there is a compelling state interest for the exclusion, and (2) that the exclusions are necessary to promote the State's articulated goal. *Phoenix* v. *Kolodjieszki*, *supra*; *Cipriano* v. *City of Houma*, 395 U. S. 701; *Kramer* v. *Union Free School District*, *supra*. See also *Police Jury of Vermillion Parish* v. *Hebert*, 404 U. S. —; *Parish School Board of St. Charles* v. *Stewart*, 310 F. Supp. 1172, aff'd, 400 U. S. 884. In my view, appellants in this case have made a sufficient showing to invoke the above principles, and the presumption thus established has not been overcome.

Assuming *arguendo* that a State may, in some circumstances, limit the franchise to that portion of the electorate "primarily affected" by the outcome of an election,

Kramer v. *Union Free School District*, *supra*, at 632, the limitation may only be upheld if it is demonstrated that "all those excluded are in fact substantially less interested or affected than those the [franchise] includes." *Ibid.* The majority concludes that "there is no way that the economic burdens of district operations can fall on residents qua residents, and the operations of the districts primarily affect the land within their boundaries."

But with all respect that is a great distortion. In these arid areas of our Nation a water district seeks water in time of drought and fights it in time of flood.

One of the functions of water districts in California is to manage flood control. That is general California statutory policy.[1] It is expressly stated in the Water Code that governs water districts.[2] The California Supreme Court ruled some years back that flood control and irrigation are different but implementary aspects of one problem.[3]

From its inception in 1926 this district has had repeated flood control problems. Four rivers, Kings, Kern, Tule, and Kaweah, enter Tulare Lake Basin. South of Tulare Lake Basin is Buena Vista Lake. In the past Buena Vista has been used to protect Tulare Lake Basin by storing Kern River water in the former. That is how Tulare Lake Basin was protected from menacing floods in 1952. But that was not done in the great 1969 flood, the result being that 88,000 of the 193,000 acres in respondent district were flooded. The board of the respondent district—dominated by the big landowner J. A. Boswell Co.—voted 6–4 to table the motion that would put into operation the machinery to divert the flood waters to the Buena Vista Lake. The reason is that

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[1] Calif. Stat. 1921, c. 914, § 58.

[2] Calif. Water Code §§ 39000, 44001.

[3] *Turpey* v. *McClure*, 190 Cal. 583, 213 P. 283.

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 harvesting of crops the next season.

The result was that water in the Tulare Lake Basin rose 192.5 USGS datum. Ellison, one of the petitioners who lives in the district is not an agricultural landowner. But his residence was 15½ feet below the water level of the crest of the flood in 1969.

The respondent district has large levees; and if they are broken, damages to houses and losses of lives are imminent.

Landowners—large or small—resident or nonresident, lessees or landlords, sharecroppers[4] or owners—all should have a say. But irrigation, water storage, the building of levees, flood control, implicate the entire community. All residents of the district must be granted the franchise.

[4] Since 1938 sharecroppers have been included in federal regulations defining "farmers" who are entitled to vote on referenda concerning marketing quotas under the Agricultural Adjustment Act.

"*Farmers engaged in the production of a commodity.* For purposes of referenda with respect to marketing quotas for tobacco, extra long staple cotton, rice and peanuts the phrase 'farmers engaged in the production of a commodity' includes any person who is entitled to share in a crop of the commodity, or the proceeds thereof because he shares in the risks of production of the crop as an owner, landlord, tenant, or sharecropper (landlord whose return from the crop is fixed regardless of the amount of the crop produced is excluded) on a farm on which such crop is planted in a workmanlike manner for harvest; *Provided*, that any failure to harvest the crop because of conditions beyond the control of such person shall not affect his status as a farmer engaged in the production of the crop. In addition, the phrase 'farmers engaged in the production of a commodity' also includes each person who it is determined would have had an interest as a producer in the commodity on a farm for which a farm allotment for the crop of the commodity was established and no acreage of the crop was planted but an acreage of the crop was regarded as planted for history acreage purposes under the applicable commodity regulations." 7 CFR § 717.3 (b).

This case, as I will discuss below, involves the performance of vital and important governmental functions by water districts clothed with much of the paraphernalia of government. The weighting of voting according to one's wealth is hostile to our system of government. See *Stewart* v. *Parrish School Board*, 310 F. Supp. 1172, aff'd, 400 U. S. 884. As a nonlandowning bachelor was held to be entitled to vote on matters affecting education, *Kramer* v. *Union Free School District*, 395 U. S. 621, so all the prospective victims of mismanaged flood control projects should be entitled to vote in water district elections, whether they be resident nonlandowners, resident or nonresident lessees, and whether they own 10 acres or 10,000 acres and their votes should be equal regardless of the value of their holdings, for when it comes to performance of governmental functions all enter the polls on an equal basis.

The majority, however, would distinguish the water storage district from "units of local government having general governmental powers over the entire geographic area served by the body," *Avery* v. *Midland County Board of Commissioners*, 390 U. S. 474, 485, and fit this case within the exception contemplated for "a special purpose unit of government assigned the performance of functions affecting definable groups of constituents more than other constituents." *Id.*, at 483–484. The *Avery* test was significantly liberalized in *Hadley* v. *Jr. College District*, 397 U. S. 50. At issue was an election for trustees of a special purpose district which ran a junior college. We said,

> ". . . since the trustees can levy and collect taxes, issue bonds with certain restrictions, hire and fire teachers, make contracts, collect fees, supervise and discipline students, pass on petitions to annex school districts, acquire property by condemnation, and in

> general manage the operations of the junior college, their powers are equivalent, for apportionment purposes, to those exercised by the county commissioners in *Avery*. . . . [T]hese powers, while not fully as broad as those of the Midland County Commissioners, certainly show that the trustees *perform important governmental functions* . . . and have *sufficient impact throughout the district* to justify the conclusion that the principle which we applied in *Avery* should also be applied here." *Id.*, at 53–54. (Emphasis added, footnote omitted.)

Measured by the *Hadley* test, the Tulare Lake Basin Water Storage District surely performs "important governmental functions" which "have sufficient impact throughout the district" to justify the application of the *Avery* principle.

Water storage districts in California are classified as irrigation, reclamation, or drainage districts.[5] Such state agencies "are considered exclusively governmental," their property is "held only for governmental purpose" and not in the "proprietary sense."[6] The Attorney General of the State calls them "political subdivisions of the state."[7] That is made explicit in various ways. The Water Code of California states that "all water and water rights" of the State "within the district are given, dedicated, and set apart for the uses and purposes of the district."[8]

Directors of the district are "public officers of the state."[9] The district possesses the power of eminent do-

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[5] Colo. Water Code § 39060.

[6] *Glen-Colusa Irrigation District* v. *Ohrt*, 31 Cal. App. 2d 619, 88 Pac. 2d 763.

[7]

[8] Section 43158.

[9] *Re Madera Irrigation Dist.*, 92 Cal. 296, 28 P. 272.

main.[10] Its works may not be taxed.[11] It carries a governmental immunity against suit.[12] A district has powers that relate to irrigation, storage of water, drainage, flood control, generation of hydroelectric energy.[13]

Whatever may be the parameters of the exception alluded to in *Avery* and *Hadley*, I cannot conclude that this water storage district escapes the constitutional restraints relative to a franchise within a governmental unit.

II

When we decided *Reynolds* v. *Sims*, 377 U. S. 533, and discussed the problems of malapportionment we thought and talked about people—of population, of the constitutional right of "qualified citizens to vote," (*id.*, at 554) of "the right of suffrage," (*id.*, at 555) of the comparison of "one man's vote" to that of another man's vote. *Id.*, at 559. We said:

> "Legislators represent people, not trees or acres. Legislators are elected by voters, nor farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system."

It is indeed grotesque to think of corporations voting within the framework of political representation of people. Corporations were held to be "persons" for purposes both of the Due Process Clause of the Fourteenth Amend-

corp vote in ~~one~~ according to ownership

[10] Calif. Water Code § 43530.
[11] *Id.*, § 34508.
[12] Calif. Gov. Code § 811.2.
[13] Calif. Water Code § 811.2.

ment [14] and of the Equal Protection Clause.[15] Yet it is unthinkable in terms of the American tradition that corporations should be admitted to the franchise. Could a State allot voting rights to its corporations, weighting each vote according to the wealth of the corporation? Or could it follow the rule of one corporation—one vote?

It would be a radical and revolutionary step to take, as it would change our whole concept of the franchise. California takes part of that step here by allowing corporations to vote in these water district matters [16] that entail performance of vital governmental functions. One corporation can outvote 77 individuals in this district. Four corporations can exercise these governmental powers as they choose, leaving every individual inhabitant with a weak ineffective voice. The result is a corporate political kingdom undreamed of by those who wrote our Constitution.

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[14] *Minneapolis & St. Louis R. Co.* v. *Beckwith*, 129 U. S. 26, 28.

[15] *Pembina Consolidated Silver Mining & Milling Co.* v. *Pennsylvania*, 125 U. S. 181, 188–189; *Santa Clara County* v. *Southern Pacific R. Co.*, 118 U. S. 394, 396.

[16] Calif. Water Code § 41004.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 22, 1973

RE: No. 71-1456 - Salyer Land Company
v. Tulare Lake Basin Water Storage

Dear Bill:

Please join me in your dissenting opinion in the above.

Sincerely,

Bill

Mr. Justice Douglas

cc: The Conference

Draft lcc 2/21/73 LFP,Jr.;psf Rough dictated file Draft of a possible concurr to emphasize why "strict scrutiny" is not applicable to this case. But I'd decided to join Rehnquist

No. 71-1456 Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.

MR. JUSTICE POWELL concurring.

I join in the opinion of the Court, but add these additional views.

The Court's opinion seems to assume that this case is to be decided within the principles enunciated in Reynolds v. Sims, 377 U.S. 533 (1964) and its progeny. The dissent by Mr. Justice Douglas explicitly would apply these principles, without finding - as the majority does - that on its facts this case is an exception to the general rule of "one ~~man~~ man, one vote."

In my view, this is not a voting rights case.* The Supreme Court

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* ~~Although the majority opinion does not address the issue,~~ If this is a voting rights case within the line of precedents of which Reynolds is the seminal authority, it is clear from our decisions that the California statute must be examined with strict scrutiny. In Kramer v. Union School District, 395 U.S. 621, 626 (1969) the Court said:

> "...In this case, we must give the statute a close and exacting examination. Since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic ~~and~~ civil and political rights, any infringement of the right of citizens to vote must be carefully and meticulously scrutinized.' Reynolds v. Sims, 377 U.S. 533,562 (1964). See Williams v. Rhoads, supra, at 31; Westberry v. Sanders, 376 U.S. 1, 17 (1964). This careful examination is necessary because statutes distributing the franchise constitute the foundation of our representative society."

of California in Tarpey v. McClure, 190 Cal. 593 (1923), in construing the statute here being challenged, correctly characterized it as follows:

> "By this and like provisions, the Legislature is not dealing with elections, with suffrage, or with the ballot, within the meaning of the Constitution and election laws of the state." Ibid at 606.

The Court's opinion (____ p. 9, 10) well summarizes the reasons why this water storage district is not comparable to a subdivision or unit of state or local government. I will emphasize only one reason which, in practical effect, may well be controlling: A substantial amount of capital is necessary to bring a project of this magnitude to fruition. Storage dams, reservoirs, irrigation canals, release and control systems are all necessary and expensive elements of a major project. The state could have elected to raise the necessary capital by taxes on the population generally or by pledging its own credit. It elected, presumably assuming a legislative judgment that this would be beneficial to the people of the state, to encourage private landowners to finance these projects without implicating either state credit or tax funds. The statutory scheme accordingly contemplates the issuance of bonds secured, in effect, by the privately owned land within the district.* The bonds, in effect, constitute a lien on the ~~privately owned~~

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* See California Water Code, Section 42275, which provides that the issuance of such bonds shall be under the general supervision of the state treasurer.

land in proportion to the extent that it is benefited by the project.*

In short, the persons who vote for the election of the managing board of directors are those who finance the project and, in effect, assume the full responsibility to repay the indebtedness to the extent of the value of their respective land holdings.

The dissenting opinion states that it is "indeed grotesque to think of corporations" voting, in ~~according~~ accordance with their ownership of land, to elect the directors of the project. Dissenting opinion of Mr Justice Douglas, supra, p. 7. I must say that it would not have occurred to me so to characterize a legislative enactment which does no more than allow those who alone provide the financing of the project to elect the directors who manage it. Or putting it differently, ~~there would be no project~~ - it would be more than grotesque — it would be totally self-defeating

*Pursuant to the statute, the state treasurer appoints three disinterested commissioners who assess the cost of the project and apportion the costs in accordance with the benefits that will accrue to each tract of land. These commissioners prepare an assessment roll which specifies the charges against each tract and states the nature of the benefit thereto. The charges recorded on the assessment roll constitute a lien on the land prior to all other liens for private indebtedness. See California Water Code Sections 42355; 46175 et seq.

if the ~~77~~ non land owning residents of the district were allowed to control it by their vote. It would be a rare landowner indeed who would allow the vote of others, who were assuming no financial responsibility whatever, to subject his property to the equivalent of mortgage indebtedness. the project and its financing

February 24, 1973

Re: No. 1456 Salyer Land Co. v. Tulare Lake Basin Water Storage District

Dear Bill:

Please join me.

Sincerely,

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 27, 1973

Re: No. 71-1456 - Salyer Land Co. v. Tulare Lake Basin Water Storage District

Dear Bill:

Please join me.

Sincerely,

T.M.

Mr. Justice Douglas

cc: Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 2, 1973

Re: No. 71-1456 - Salyer Land Co. v. Tulare Lake Basin Water Storage District

Dear Bill:

Please join me.

Regards,

Mr. Justice Rehnquist

Copies to the Conference

THE C. J.	W. O. D.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.
								1/22/73
join WHR 3/5/73	dismissal circulated 2/a/73	will dissent Wt dsgd 4/2/73	join WHR 2/15/73	join WHR 2/20/73	will wait for dissent 2/13/73	join WHR 2/17/73	join WHR 2/24/73	circulated 1st draft 2/9/73 3rd draft 2/13/73
	2nd draft 2/14/73 3rd draft	join WJD 4/2/73			join WOD 4/27/73			
	2/20/73 5th draft 3/23/73							
	6th draft 3/1/73							

71-1456 Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.