REGULATION WITHOUT REPRESENTATION: *HOLT CIVIC CLUB*

Extraterritorial powers, granted by the states to municipalities, allow municipalities to regulate conduct and provide services beyond their borders.[1] Nonresidents subject to such extraterritorial regulation, however, lack the right to vote in the controlling municipal gov-

1. Extraterritorial powers involve municipal control over adjacent unincorporated areas. Note, *The Constitutionality of the Exercise of Extraterritorial Powers by Municipalities*, 45 U. CHI. L. REV. 151 (1977). These powers may be proprietary functions or police functions. 1 C. ANTIEAU, MUNICIPAL CORPORATION LAW §§ 5.11-.12 (1979). An example of the former is the sale of water by a municipality to nonresidents. Colorado Open Space Council, Inc. v. City of Denver, 190 Colo. 122, 543 P.2d 1258 (1975) (power to sell water within state enabling act). An example of the latter is the arrest of persons by city police outside the city limits. Wright v. State, 134 Ga. App. 406, 214 S.E.2d 688 (1975) (upheld the arrest of a person driving while intoxicated by an Atlanta policeman in an unincorporated territory).

The widespread use of municipal extraterritorial power is not a recent innovation. The Greek city-state exercised broad control over surrounding territories, and, at early common law, an English city had different jurisdictions for different purposes. R. MADDOX, EXTRATERRITORIAL POWERS OF MUNICIPALITIES IN THE UNITED STATES 6-8 (1955). In the United States, 35 states provide municipalities with some extraterritorial powers. Note, *The Constitutionality of the Exercise of Extraterritorial Powers by Municipalities*, 45 U. CHI. L. REV. 151 (1977).

Extraterritorial powers allow municipalities to control development on the urban fringe with an eye toward future annexations. Bartelt, *Extraterritorial Zoning: Reflections on its Validity*, 32 NOTRE DAME LAW. 367, 372 (1957). Also, the city may need to act outside its borders to provide services such as the provision of water to its residents. There also may be a need to prevent negative externalities caused by nuisances beyond the city limits. *See* Anderson, *The Extraterritorial Powers of Cities*, 10 MINN. L. REV. 475 (1926). *See also* Crane v. Borough of Essex Fells, 67 N.J. Super. 83, 169 A.2d 845 (Ch. Div. 1961) (municipality allowed to conduct a 72-hour feasibility test for water provision outside its borders); Treadgill v. State, 160 Tex. Crim. 658, 275 S.W.2d 658 (Crim. App. 1955) (upheld a ban on sale and use of fireworks within 5,000 feet of city limits because it represented a nuisance to city).

A reasonable alternative to granting extraterritorial powers is to alter municipal boundaries to reflect the community needs. Failure to meet these needs has been cited as the most critical problem facing metropolitan areas today. *See* F. SENGSTOCK, EXTRATERRITORIAL POWERS IN THE METROPOLITAN AREA 70 (1962). For financial or other reasons, however, persons residing beyond city limits may strongly oppose inclusion, rendering this solution politically unfeasible. Bouwsma, *The Validity of Extraterritorial Municipal Zoning*, 8 VAND. L. REV. 806, 807 (1955).

ernment's elections.[2] In *Holt Civic Club v. City of Tuscaloosa*,[3] the Supreme Court held that granting extraterritorial powers without extending the right to vote does not violate the federal equal protection clause.[4]

Plaintiffs in *Holt* challenged Alabama's three-mile extraterritorial "police jurisdictions" surrounding municipalities with populations of at least six thousand persons.[5] Alabama statutes provide that police, sanitary, and court authority extend into the regulated area.[6] The municipality also establishes licensing regulations for businesses, trades, and professions existing within the police jurisdiction.[7] Nonresidents[8] alleged that the failure to extend the franchise to persons so regulated infringed their fundamental right to vote in violation of their constitutional right to equal protection.[9] A three-judge court,

2. Without representation, nonresidents have not successfully challenged regulation. Note, *The Constitutionality of the Exercise of Extraterritorial Powers by Municipalities*, 45 U. CHI. L. REV. 151, 151 (1977). Little Thunder v. South Dakota, 518 F.2d 1253 (8th Cir. 1975) stands as the single exception to this rule. The court of appeals found that the total power granted to organized counties over adjacent unorganized counties unconstitutionally infringed upon the right to vote.

3. 439 U.S. 60 (1978).

4. *See* notes 5-13 and accompanying text *infra*.

5. ALA. CODE § 11-40-10 (1975).

6. ALA. CODE § 11-40-10 (1975) provides, in part, that "[o]rdinances of a city or town enforcing police or sanitary regulations and prescribing fines and penalties for violations thereof shall have force and effect in the limits of the city or town and in the police jurisdiction thereof. . . ." A partial listing of Tuscaloosa's police and sanitary regulations includes building codes and standards, mobile home park controls, protection of certain birds, public health controls, traffic regulations, and criminal ordinances. 439 U.S. at 82-84 n.10 (Brennan, J., dissenting).

ALA. CODE § 12-14-1(b) (1975) grants the municipal court "jurisdiction [over] all prosecutions for the breach of the ordinances of the municipality within its police jurisdiction."

7. ALA. CODE § 11-51-91 (1975) provides "[a]ny city or town within the state of Alabama may fix and collect licenses for any business, trade, or profession done within the police jurisdiction of such city."

In addition to the powers already mentioned, the municipality also has important extraterritorial planning functions not challenged in *Holt*. ALA. CODE §§ 11-52-8, 11-52-30, 11-52-31 (1975). On the other hand, municipalities may not levy ad valorem taxes, exercise eminent domain or zone property in the police jurisdiction. 439 U.S. at 72-73 n.8.

8. Plaintiffs, seven Holt residents and the Holt Civic Club, an unincorporated association located within Tuscaloosa's police jurisdiction, sought to represent all Alabama residents subject to police jurisdiction. 525 F.2d 653, 654-55 (5th Cir. 1975).

9. In essence, the class argued that since residents of the municipality and residents within the police jurisdiction both are affected by the decisions of the municipal

convened by order of the court of appeals, dismissed the claim.[10] The Supreme Court[11] held that the right to vote in municipal elections does not extend to non-geographic residents[12] and that the statutes are consistent with the equal protection clause.[13]

The Supreme Court adopted a broad view of state power over political subdivisions in *Hunter v. City of Pittsburgh*.[14] This view accords states "absolute discretion over where, when, and what powers municipalities exercise," including extraterritorial powers.[15] Subsequent cases, however, required state delegations of power that provide for municipal classification to conform with equal protection standards.[16] The equal protection requirement involves the applica-

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government, the state must show a compelling interest in denying the franchise to one group. 439 U.S. at 66.

10. Plaintiffs sued under 28 U.S.C. § 2281 (repealed 1976) which required a three-judge district court to hear suits requesting enjoinment or enforcement of any state statute on grounds of unconstitutionality. Parties could only proceed under this section where the municipal officer charged is enforcing a state-wide policy. Moody v. Flowers, 387 U.S. 97, 101-02 (1967). The district court denied the motion to convene such a court because the municipal officials lacked state-wide authority. Holt Civic Club v. City of Tuscaloosa, No. 73-M-736 (case dismissed, N.D. Ala., July 31, 1975). On appeal, the Fifth Circuit reversed because only municipal officials exercised the state-created powers. Holt Civic Club v. City of Tuscaloosa, 525 F.2d 653 (5th Cir. 1975). On remand, a three-judge court dismissed the case for failure to request proper relief. Holt Civic Club v. City of Tuscaloosa, No. 73-M-736 (case dismissed, N.D. Ala., June 7, 1977). The Supreme Court heard the case on its merits because FED. R. CIV. P. 54(c) requires federal courts to grant proper relief despite an improper prayer for relief. 439 U.S. at 66.

11. Mr. Justice Rehnquist wrote the majority opinion. Mr. Justice Stevens filed a concurring opinion, and Mr. Justice Brennan, joined by Mr. Justices White and Marshall, dissented. *See* note 44 *infra*.

12. The majority found that no previous voting rights case extended the right to vote principles beyond the geographic boundary of a political subdivision and the Court did not avail itself of the opportunity to do so. 439 U.S. at 68. *See* note 39 *infra*.

13. *See* note 17 *infra*.

14. 207 U.S. 161 (1907). *Hunter* challenged the statutory majority required to approve an annexation. The statute required a majority of the total votes cast in the annexing municipality and the area proposed for annexation to favor annexation. This electoral scheme allowed an affirmative vote within a large municipality to overwhelm the opposition in the area for annexation.

15. *Id.* at 178. The Court characterized municipal corporations as "convenient agencies of the state" to which the state may delegate any powers over any area it deems appropriate. The state constitution was the only limitation on the power to delegate. *Id.* at 178-79.

16. In Gomillion v. Lightfoot, 364 U.S. 339 (1960), a statute changed a city geographically from a square to a 28-sided figure, effectively excluding all blacks from

tion of two tests: strict scrutiny where the legislative classification affects a fundamental right or suspect class, and rational relationship for all other classifications.[17]

A major limitation on state power over political subdivisions was the emergence of a fundamental right to vote doctrine,[18] first articu-

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the city. The Court, finding that the statute violated the Fifteenth Amendment, held that state power over municipalities, as well as any other state power, must be exercised consistent with the United States Constitution. *Id.* at 344-45. *See* Comment, *Federal Constitutional Limitations on State Power Over Political Subdivisions*, 61 COLUM. L. REV. 704 (1961).

Subsequent cases comply with *Gomillion*. In Harper v. Virginia Bd. of Elects., 383 U.S. 663 (1966), the Court struck down a state poll tax because it violated equal protection. In Bullock v. Carter, 405 U.S. 134 (1972), a Texas statute exacting fees from primary candidates did not pass constitutional muster. Again, the Court required state action to conform with the federal Constitution. Finally, in American Party v. White, 415 U.S. 767 (1974) the Court struck down a statute providing that only the names of the two major party candidates should appear on absentee ballots. Thus, the extraterritorial powers granted by Alabama must conform with the Constitutional provisions applied to the states.

17 *See* Dixon, *The Supreme Court and Equality: Legislative Classifications, Desegregation, and Reverse Discrimination*, 62 CORNELL L. REV. 494, 498 (1977). The strict scrutiny test requires that the classification "promote a *compelling* governmental interest." Shapiro v. Thompson, 394 U.S. 618, 634 (1969) (struck down one-year state residency requirement for welfare applicants because it interfered with the fundamental right to travel). Where the Court employs the rational relation test, equal protection "is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective." McGowan v. Maryland, 366 U.S. 420, 425 (1961) (upheld a Maryland Sunday Closing Law which exempted some businesses).

Scholars criticize the two test equal protection analysis on several grounds. First, the Court is unable to define which interests are fundamental. Karst, *The Supreme Court 1976 Term—Forward: Equal Citizenship Under the Fourteenth Amendment*, 91 HARV. L. REV. 1, 3 (1977). Second, the inability of legislation employing suspect classes or infringing upon fundamental rights to survive strict scrutiny, Dixon, *supra*, at 503-04, leads to the conclusion that the standards are too inflexible. Yarbrough, *The Burger Court and Unspecified Rights: On Protecting Fundamental and Not-So-Fundamental "Rights" or "Interests" Through a Flexible Conception of Equal Protection*, 1977 DUKE L.J. 143, 144. Finally, some believe that the current equal protection analysis is a wholly illegitimate mode of constitutional interpretation. *Cf.* Linde, *Due Process of Lawmaking*, 55 NEB. L. REV. 197, 253 (1975). *Contra*, Grey, *Do We Have an Unwritten Constitution*, 27 STAN. L. REV. 703 (1975) (present interpretation traced back to the natural-rights tradition).

18. The importance of the right to vote is not a recent revelation. In *Ex parte* Yarbrough, 110 U.S. 651 (1884), the Supreme Court upheld statutes imposing criminal sanctions against persons infringing on another's right to vote. In Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886), a case which struck down a statute restricting the operation of laundries, the Court termed the right to vote a "fundamental right, preservative of all rights." Despite this language, the Court allowed the collection of poll taxes, Breedlove v. Suttles, 302 U.S. 277 (1937), and until the apportionment cases, the Court gave no real substance to its words. *See generally Developments in the*

lated in the apportionment context.[19] The apportionment cases demand that each person's vote carry substantially the same impact on the outcome of an election.[20] This principle, "one person, one vote,"[21] applies to all governmental apportionment.[22] The right to

Law—Elections, 88 HARV. L. REV. 1111 (1975); Comment, *A Case Study in Equal Protection: Voting Rights Decisions and a Plea for Consistency*, 70 NW. L. REV. 934 (1976).

19. Early in the twentieth century, large segments of the rural population migrated to urban areas. At the same time, rural legislators maintained disproportionate control of Congress and state legislatures through refusals to reapportion, inaccurate reapportionments, and shifts from population based apportionment plans to other bases. Thus, the apportionment cases responded to the inadequate legislative representation of urban areas. *See* Vocino, Morris & Gill, *The Population Apportionment Principle: Its Development and Application to Mississippi's State and Local Legislative Bodies*, 47 MISS. L.J. 943 (1976).

In the first important modern voting rights case, Baker v. Carr, 369 U.S. 186 (1962), the Court held the apportionment cases justiciable. *See generally* McKay, *Political Thickets and Crazy Quilts: Reapportionment and Equal Protection*, 61 MICH. L. REV. 645 (1963). In deciding the apportionment cases, the Court developed the content of the fundamental right to vote. L. TRIBE, AMERICAN CONSTITUTIONAL LAW 738 (1978).

20. In Reynolds v. Sims, 377 U.S. 533 (1964), the Court struck down a non-population based apportionment plan because the right to vote is fundamental. The Court stated that "any alleged infringement of the right to vote must be carefully and meticulously scrutinized." *Id.* at 562. Any dilution of the right to vote through apportionment plans was considered antithetical to the principle of representative government. *Id.* at 555.

In Wesberry v. Sanders, 376 U.S. 1 (1964), the Court struck down Georgia's congressional districting whereby one congressman represented more than 800,000 persons while another represented less than 300,000 persons. The Court stated that "[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Id.* that 17. The Court concluded it was necessary for an apportionment scheme to give equal numbers of voters equal representation. *Id. See generally* Dixon, *Reapportionment in the Supreme Court and Congress: Constitutional Struggle for Fair Representation*, 63 MICH. L. REV. 209 (1964); Sickels, *Dragons, Bacon Strips and Dumbbells—Who's Afraid of Reapportionment*, 75 YALE L.J. 1300 (1966).

21. Justice Douglas first stated this famous expression of the apportionment principle in Gray v. Sanders, 372 U.S. 368 (1963) (enjoined a state primary electoral system whereby rural votes were overweighted). "The conception of political equality . . . can mean only one thing—one person, one vote." *Id.* at 381.

22. *E.g.*, Wesberry v. Sanders, 376 U.S. 1 (1964) (apportionment of congressional districts). In WMCA, Inc. v. Lorenzo, 377 U.S. 633 (1964), the Supreme Court struck down an apportionment scheme for the New York legislature because of underrepresentation of densely populated areas. Finally, in Hadley v. Junior College Dist., 397 U.S. 50 (1970), the Court struck down a junior college district apportionment plan because of overrepresentation of less populous school districts. The Court summed up the application of one man, one vote by stating: "Whenever a state or local government decides to select persons by popular election to perform governmental functions,

vote does not have to be granted. Once it is, however, the right must be accorded equally to all voters absent a compelling state interest.[23]

A state may not infringe upon the fundamental right to vote through arbitrary statutory definitions of residency. In *Carrington v. Rash*,[24] the Court struck down a statutory presumption which denied residency to members of the armed forces serving in Texas and thereby excluded them from the franchise.[25] Similarly, in *Evans v.*

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the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election." *Id.* at 56. The Court does not, however, require state legislative apportionments to have the same degree of voter equality as congressional apportionments. Walker, *One Man-One Vote: In Pursuit of an Elusive Ideal*, 3 HASTINGS CONST. L.Q. 453, 461 (1976).

23 This characteristic distinguishes the fundamental right to vote from other fundamental rights. The existence of elections is irrelevant, but where they exist they must be available equally to all voters. L. TRIBE, AMERICAN CONSTITUTIONAL LAW 737 (1978). For example, in Sailors v. Board of Educ., 387 U.S. 105 (1967), the Court upheld the selection of county school board members by delegates of local school boards without regard to the relative population of local school districts. Since the county chose not to elect county board members, the "one person, one vote" principle was irrelevant. *Id.* at 111. The Court explicitly noted in San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 35 n.78 (1973), that while there is no constitutionally protected right to vote *per se*, there is a constitutionally protected right to "participate in state elections on an equal basis with other qualified voters whenever the State has adopted an elective process for determining who will represent any segment of the State's population." The Court upheld a property-based school finance system whereby areas with low land values have correspondingly underfinanced school systems.

The characterization of the right to vote as fundamental requires the state to show a compelling interest in any statute which infringes upon that right. Wall, *Equal Protection: Analyzing the Dimensions of a Fundamental Right—The Right to Vote*, 17 SANTA CLARA L. REV. 163, 163-65 (1977). Thus, in Harper v. Virginia Bd. of Elects., 383 U.S. 663 (1966), the Court struck down a poll tax because the state could not prove any relationship between wealth and voting qualifications. In Dunn v. Blumstead, 405 U.S. 330 (1972), a 15-month residency requirement did not withstand strict scrutiny. The Court held that prevention of fraud and insuring knowledgeable voters could not justify the length of the limitation. *Id.* at 345. The Court also stated, however, that "bona fide residence" requirements could withstand strict scrutiny because they are "necessary to preserve the basic conception of a political community." *Id.* at 343-44. Thus, in Marston v. Lewis, 410 U.S. 679 (1973), the Court upheld a 50-day durational residency requirement.

24 380 U.S. 89 (1965).

25. *Id.* at 93. The state asserted that the statute protected small civilian communities which might be drowned out at the polls by military personnel, and protected the "franchise from infiltration by transients." *Id.* The conclusive presumption that defined military personnel as nonresidents violated equal protection. The Court refused to disenfranchise military personnel simply because their political views and interests might differ from other persons. *Id.* at 94.

Cornman,[26] the Court held that a state must grant the right to vote to persons living on a federal reservation within the state.[27] The Court refused to allow "fictional" state-drawn boundaries to interfere with an interested person's right to vote.[28]

Municipalities, on several occasions, have successfully defended denials of the right to vote by asserting that the nonvoting class had no interest in the election. In *Kramer v. Union Free School Dist. No. 15*,[29] for example, New York limited the right to vote to owners of taxable realty and parents or guardians of school children.[30] Applying a strict scrutiny test, the Court found that the classification unconstitutionally infringed upon the right to vote since all district residents had some interest in the quality of the school district.[31] After *Kramer*, the Court denied states the right to limit the franchise in bond referendums to property owners or to taxpayers because all residents had an interest in the bonds.[32]

26. 398 U.S. 419 (1970).

27. The enclave was a National Institute of Health research facility subject to congressional power. In 1953, Maryland ceded jurisdiction over the enclave to the United States and subsequently disenfranchised the enclave residents. *Id.* at 420-21. The Court applied strict scrutiny in striking down the statute because a "State may not dilute a person's vote . . . and a lesser rule could hardly be applicable to a complete denial" of the franchise. *Id.* at 423.

28. The state asserted that because Congress controlled the enclave residents, they had no interest in state elections. Congress, however, previously granted the states substantial control over federal enclaves. Enclave residents were, for example, subject to state taxes, criminal laws, and jurisdiction in state courts, and used the state's school system. *Id.* at 424. These facts provided strong support for the Court's decision to disregard fictional boundaries. *Id.* at 421-22.

29. 395 U.S. 621 (1969).

30. Under the New York statute, voters had to meet one of three requirements in addition to the usual eligibility requirements for voting in local elections: own or lease, or be the spouse of the owner or lessor of property taxable for school purposes; be the parent of a child presently in school; or, be the guardian of a child presently in school. *Id.* at 633-34.

31. The Court applied strict scrutiny because statutes discriminating against the right to vote offend the legitimacy of government. *Id.* at 626. The Court found that persons precluded from voting may have a greater interest than some persons allowed to vote and struck down the statute. *Id.* at 632.

32. Cipriano v. City of Houma, 395 U.S. 701 (1969) (per curiam). In *Cipriano*, the Court applied strict scrutiny and struck down a statute limiting the franchise in a municipal utility bond referendum to payers of property tax. Since the operation of the utility affected all city residents, the city could not limit the franchise. *Id.* at 705. Similarly, in City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970), the Court invalidated a restriction which allowed only property owners the right to vote in a general obligation bond election. Using strict scrutiny, the Court noted a difference in interest

Two Supreme Court cases, however, have upheld the denial of the right to vote to groups of citizens where the Court found that the persons had no interest in the election. In *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*,[33] the Court upheld a statute permitting only landowners the right to vote for directors of the water district.[34] Since the water district only had a limited purpose that disproportionately affected landowners, the Court did not apply strict scrutiny.[35] The Court employed the same rationale in *Associated Enterprises, Inc. v. Toltec Watershed Improvement Dist.*,[36] to uphold a statute allowing only landowners to vote in referendums on approval

between property owners and non-owners but held that both groups were interested and must be granted the right to vote. *Id.* at 209, 212.

33. 410 U.S. 719 (1973).

34 In addition to limiting the franchise the statute distributed votes among landowners according to the value of their property. *Id.* at 725. Notwithstanding the one man, one vote cases, the Court deemed this voting scheme rational since it distributed the vote in proportion to the benefits and burdens incurred. Assessment for the cost of the project was proportional to the size of landholdings. *Id.* at 734.

35. The *Salyer* decision was problematic. Mr. Justice Douglas, writing for the dissent, noted that flooding resulted from past water district decisions not to activate water diversion machinery at appropriate times. These floods adversely affected landowners and nonlandowners alike. Thus, nonlandowners had as much interest as the disenfranchised voters in *Kramer*. *Id.* at 737-39.

Another difficulty with *Salyer* is its use of the rational relation test. After *Salyer*, where the election involves a general governmental unit, courts applied strict scrutiny to test the validity of limitations on the right to vote, but applied the rational relation test in cases involving special governmental units. *See* Garton, *One Person, One Vote in Special District Elections: Two Ideas and an Illustration*, 20 S.D.L. REV. 245, 255 (1975). The use of different standards of review depending on the type of governmental unit involved, although historically grounded, is not logical. *See* Lee, *Mr. Herbert Spencer and the Bachelor Stockbroker: Kramer v. Union Free School District No. 15*, 15 ARIZ. L. REV. 457, 475 (1973).

Although the Court in *Kramer* suggested that there may be appropriate cases for interest-based limitation, 395 U.S. at 632, it seems clear that *Salyer* was not what the Court had in mind. "*Salyer* is inconsistent with the attempt in *Kramer* to encourage greater voter participation," Comment, *Equal Protection: Analyzing the Dimensions of a Fundamental Right—The Right to Vote*, 17 SANTA CLARA L. REV. 163, 175 (1977), and violates the rule in *Kramer* requiring interested parties to vote. Note, *Constitutional Law—Voter Equality—Equal Protection—Special Purpose Unit Exception to One-Man One-Vote*, 1974 WIS. L. REV. 253.

The inconsistencies between *Kramer* and *Salyer* make the two cases difficult to reconcile. J. NOWAK, R. ROTUNDA & J. YOUNG, HANDBOOK ON CONSTITUTIONAL LAW 637 (1978). Nonetheless, in Hill v. Stone, 421 U.S. 289, 297 (1975) (statute giving property owners disproportionate strength in bond election found unconstitutional) the Court upheld the special interest distinction between *Kramer* and *Salyer*.

36. 410 U.S. 743 (1973) (per curiam).

of the formation of watershed districts.[37]

All the cases enforcing the fundamental right of citizens to vote involved geographic residents interested in the election.[38] *Holt* is the first case to consider the right of interested nonresidents to vote.[39] The Court reviewed its past decisions and, finding no case supporting nonresident voting rights, concluded that municipalities may limit the franchise to residents.[40] The Court reasoned that if the fundamental right to vote applied to nonresidents affected by municipal activity, the right to vote could never be contained.[41] Finding no fundamental right, the Court applied the rational relationship test.[42] Noting the wide latitude granted states over political subdivisions in *Hunter*,[43] the Court concluded that the use of extraterritorial powers was a rational legislative response to the need for services in unincorporated territories.[44]

Previous cases, however, held that the fundamental right to vote required that the franchise include both groups where two groups

37. Because of its characterization of watershed districts as special purpose units, *id.* at 744, the Court applied a rational relation test and concluded that landowners had a disproportionate interest. *Id.* at 745.

38. The apportionment cases involved residents of the relevant government unit. The disenfranchised soldiers in *Carrington* resided in the state and municipality in which they sought to vote. In *Evans*, while the state characterized enclave inhabitants as nonresidents, they were geographically situated within Maryland's borders. Finally, the disenfranchised persons in *Kramer* resided within the school district.

39. Holt's inhabitants are police jurisdiction residents living beyond the geographic boundaries of Tuscaloosa. 439 U.S. at 61-62.

40. *Id.* at 66-69.

41. The Court's argument was that municipal government decisions always affect, whether directly or indirectly, persons living on the municipal fringe and that "no one would suggest that nonresidents" indirectly affected should vote. *Id.* at 69. While this may be true, the Court fails to explain why persons subject to direct purposeful control should not vote.

42. *Id.* at 70-75. The holding in *Kramer*, modified by *Salyer*, however, is that strict scrutiny applies to limitations on voting for general governmental elections. Clearly, the city of Tuscaloosa is such a unit, and the Court should have applied *Kramer*.

43. *Id.* at 71. The Court failed to explain why the state delegation challenged in *Holt* should receive greater deference than previous cases allowed. *See* notes 14-16 and accompanying text *supra*.

44. 439 U.S. at 75. In addition, the Court found it was rational for Alabama to grant municipalities a certain degree of control over an area of potential annexation.

Mr. Justice Stevens, in his concurring opinion, suggested that no infringement of the fundamental right to vote had occurred since Holt residents still elected county and state officials. *Id.* at 77. This was equally true of the plaintiffs in *Kramer*, however. Also, since the ability to vote in more elections grants Tuscaloosa a greater

had the same interest in an election.[45] In *Holt*, the same police and sanitary ordinances regulated the lives of residents and nonresidents alike. Similarly, municipal court jurisdiction extended to both groups. The pervasiveness of the city's extraterritorial power led the dissent to conclude that the interest of nonresidents in *Holt* surpassed the interest of the disenfranchised residents in *Kramer*.[46] Thus, following the rule in *Kramer*, the right to vote in city elections should extend to the police jurisdiction residents.

The *Holt* court failed to analyze the interests of residents and nonresidents in the city's government. The Court stated that since Holt plaintiffs resided in the police jurisdiction and not within the geographic bounds of the city, no fundamental right to vote existed. Prior cases, however, disregarded geographic lines where the interests of residents and nonresidents were the same.[47]

The Court admitted, nonetheless, that if a municipality exercises "precisely the same governmental powers over" nonresidents as it exercises over residents, both groups must vote.[48] Thus, the Court

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degree of control over elected officials, Mr. Justice Stevens' argument fails when measured against the one person, one vote principle.

The dissent correctly argues that state characterizations of residency may not deny equal protection and that Holt residents have a clear interest in Tuscaloosa elections. Thus, they should have the right to vote. *Id.* at 86-88.

45. *See* notes 29-32 and accompanying text *supra*.

46. 439 U.S. at 85. The disenfranchised group in *Kramer* only had an interest in the general well-being of the community because they were neither property-owners whose taxes paid for the operation of the school district nor parents or guardians of school children. Unlike the *Kramer* case, Tuscaloosa's government directly regulated the police jurisdiction residents in *Holt*. Thus, the quality of government in Tuscaloosa concerned and affected the Holt residents.

47. In *Evans*, *see* notes 27-28 *supra*, the Court required scrutiny of the interests of state-defined nonresidents and residents. Where these interests are the same, state residency requirements violate equal protection. The Court distinguished *Evans*, because the disenfranchised group in *Evans* lived within the borders of Maryland, while the disenfranchised group in *Holt* lived outside the borders of the governmental unit involved. 439 U.S. at 67-68. This distinction is unacceptable since the disenfranchised group in both cases challenged a state-defined residency requirement. Equal protection dictates that if the same political subdivision governs both groups, then each group has the right to vote in political subdivision elections regardless of the side of the state-drawn line on which they live.

48. *Id.* at 72, 73 n.8. Thus, the Court draws the line on extraterritorial powers where they amount to an annexation "in all but name." *Id.* Should the Supreme Court require only a rational relationship to limit the franchise, this result is not required. A limitation of a city's franchise to its more densely populated core is rationally related to greater need for regulation and service in that area, although clearly constitutionally infirm.

evinces a willingness to subjugate nonresidents to the will of residents so long as a state shrewdly withholds a single power from the extra-territorial delegation.[49] To prevent this result, the Court should disregard the geographic lines and weigh the interests of residents and nonresidents under equal protection principles.

After *Holt*, a state may deny a citizen his fundamental right to vote for representatives who govern his life. State-drawn boundaries now have a degree of significance which had been previously denied. While the Court did not overrule *Kramer* and its progeny, their continued viability is uncertain.[50]

A major facet of the fundamental right to vote is the guaranty that interested parties may voice their opinions in elections. Persons should not be subjected to the decisions of forums from which they are excluded. Only where there is a compelling state interest should this right be compromised. By denying Holt residents the right to vote, the Court has eroded this fundamental right.

Steven F. Gutman

49. For example, the state may grant a municipality total control over adjacent territory except for the provision of fire prevention and control. Thus, while the municipality may not put out fires or regulate associated hazards, it may tax the "nonresidents," putting such revenues to uses determined by a government elected by "residents." Further, the "nonresidents" must abide by a host of regulations enacted by the "resident" elected government. It is clear that such a government does not represent or necessarily service the needs, interests, or desires of "nonresidents," and is antithetical to American notions of democracy.

50. The *Salyer* case limited *Kramer* to general governmental units. *Holt* limited *Kramer* to persons living within those general governmental units. The Court seems to be limiting *Kramer* to its facts.