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Constitutional Law--Equal Protection--Property Ownership Qualifications on the Right To Vote in Special Municipal Elections--*Cipriano v. City of Houma*

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RECENT DEVELOPMENTS

CONSTITUTIONAL LAW—Equal Protection—Property Ownership Qualifications on the Right To Vote in Special Municipal Elections—*Cipriano* *v. City of Houma**

Plaintiff, a resident of Houma, Louisiana, who owned no real property, brought a class action seeking to prevent the city from issuing utility revenue bonds approved by a vote of the property taxpayers at a special election. He argued that the Louisiana statute¹ restricting the right to vote in such elections to property owners² was unconstitutional. Plaintiff relied on *Harper v. Virginia Board of Elections*,³ in which the Supreme Court declared that Virginia's required payment of poll taxes for voting in general elections was a violation of the equal protection clause of the fourteenth amendment. *Harper*, he claimed, established that any voter qualification based on property ownership violates the equal protection clause. The three-judge federal district court rejected this argument, one judge dissenting; *held*, the denial to residents who do not own property of the right to vote in municipal elections on the issuance of revenue bonds for public utilities does not violate the equal protection clause of the fourteenth amendment.

In general, there appear to be two types of limitations on the right to vote that are constitutionally permissible. Voter-qualification requirements may be sustained either when they promote intelligent or responsible voting⁴ (voting competence) or when they

* 286 F. Supp. 823 (E.D. La. 1968). This case was reversed by the Supreme Court in a unanimous decision on June 16, 1969 while this issue was in the final stage of being printed. N.Y. Times, June 17, 1969, at 57, col. 5.

1. LA. REV. STAT. § 33:4258 (1950), pursuant to LA. CONST. art. 14, § 14(a). In the case of utility revenue bonds, LA. CONST. art. 14, § 14(m) contemplates an optional election, but the section first mentioned above makes it mandatory. If the voters in the special election veto the bond issue, that veto is decisive. If they approve it, final approval must still be given by the local governing body. LA. REV. STAT. §§ 33:4252, 33:4258 (1950). Only the constitutionality of the distinction between property owners and nonproperty owners will be examined here; it should be noted, however, that the Louisiana statutes cited require that bond issues be authorized by a majority of the property taxpayers in "number and amount"—a requirement of doubtful constitutionality in light of the development of, and emphasis on, one man-one vote.

2. The property taxpayer requirement has been interpreted as a property ownership requirement. *McFatter v. Beauregard Parish School Bd.*, 211 La. 443, 30 S.2d 197 (1947); C. ADRIAN & C. PRESS, *GOVERNING URBAN AMERICA* 90 (3d ed. 1968) ("By property taxpayers are meant property owners, of course").

3. 383 U.S. 663 (1966).

4. In *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. 45, 51 (1959), the Court upheld North Carolina's literacy requirement, concluding that "[t]he ability to read and write has some relation to standards designed to promote the intelligent use of the ballot." Other qualifications the Court there cited as constitutionally permissible were age, residence, and previous criminal record.

serve to separate persons with a substantial interest in the outcome of an election from others with little or no such interest⁵ (interest in the result). If the property ownership qualification in *Cipriano* performs either of these functions, the decision of the district court should be upheld.

Qualifications for voting are traditionally established by the legislature, and thus it might seem that the legislative determination on the questions of voting competence and interest in the election should prevail. A strong presumption of validity normally attaches to legislative enactments,⁶ and consequently it is not the function of the judiciary to decide whether the means adopted by the legislature are the best means possible to attain the end sought.⁷ Indeed, the court in *Cipriano* relied heavily on the legislature's

There is some indication that restrictions on the states may be even more stringent when a congressional enactment is involved than when the fourteenth amendment alone is involved. In *Cardona v. Power*, 384 U.S. 672 (1966), the Court found that by force of the supremacy clause and section 4(e) of the Voting Rights Act of 1965, 42 U.S.C. § 1973(c) (Supp. III, 1965-1967), the State of New York's English literacy requirement cannot be enforced against persons legally literate in Spanish by virtue of successful completion of sixth grade in a public school, or in a private school accredited by the Commonwealth of Puerto Rico.

The Court has condemned voter qualifications which bear no demonstrable relation to the promotion of intelligence and responsibility in voting. For instance, in *Carrington v. Rash*, 380 U.S. 89 (1965), it struck down a provision of the Texas constitution which prohibited any member of the armed forces who moved to Texas from ever voting in that state while still in the armed forces. 380 U.S. at 91-92. In *Harper*, the Court declared the Virginia poll tax unconstitutional saying, "Voter qualifications have no relation . . . to paying . . . this or any other tax." 383 U.S. at 666.

5. The Supreme Court has stressed the basic premise that issues should be decided by a majority of the people concerned. *Reynolds v. Sims*, 377 U.S. 533 (1964); *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Gray v. Sanders*, 372 U.S. 368 (1963); *Baker v. Carr*, 369 U.S. 186 (1962). As one distinguished observer has concluded, "In all the cases emerges the basic proposition that a majority of the human beings concerned will determine their political and economic fate." A. SUTHERLAND, *CONSTITUTIONALISM IN AMERICA* 508 (1965).

It is apparent that if a person has no concern with the outcome of an election, it is not a denial of equal protection to deny him the right to vote. However, it will not always be possible to say that a person has no interest whatsoever in the outcome of an election. Rather, the line must be drawn on the ground that certain people have a substantially greater interest in an issue than others, whose interest may be indirect or insubstantial. If this is established, it is not unreasonable or unfair to exclude the latter group from voting on a particular issue. For instance, a resident of Ann Arbor who commutes fifty miles to Detroit to work is undoubtedly affected by and interested in the outcome of the municipal elections in Detroit; however, it is not unconstitutional to deny him the right to vote in those elections. The distinction would have to be drawn on the basis of the fact that property owners as opposed to those who did not own property in Detroit were substantially more interested in the outcome and issues of such general elections, and the latter group had no other interests substantial enough to entitle them to vote.

6. *See, e.g.*, *Toombs v. Citizens Bank*, 281 U.S. 643, 647 (1930); *Home Tel. & Tel. Co. v. City of Los Angeles*, 211 U.S. 265 (1908).

7. *McLean v. Arkansas*, 211 U.S. 539, 547 (1909); *cf. Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 527 (1959). *See also Old Dearborn Distrib. Co. v. Seagram Distillers Corp.*, 299 U.S. 183 (1936); *Standard Oil Co. v. City of Marysville*, 279 U.S. 582 (1929); *St. Louis Southwestern Ry. v. Board of Directors*, 207 F. 338 (8th Cir. 1913).

determination that the property ownership qualification serves as a wise fiscal restraint.⁸ However, it is clear that the legislature cannot choose a method that violates the fundamental liberties of individuals if the same end can be achieved without infringing those liberties.⁹ In the *Cipriano* situation, there might well be alternative means for promoting fiscal restraint which do not impinge on a number of citizens' right to vote, as the property ownership qualification does. Possible alternatives include such mechanisms as manipulation of debt ceilings, state approval of locally approved bond issues, or the present requirement of the Louisiana statute that final approval of the bond issue be given by the local governing body.¹⁰ If these alternative means are as reasonable and as workable as that of a property ownership requirement, the statutory limitation on the right to vote in *Cipriano* would be unconstitutional.¹¹

But even assuming that there are no such reasonable and workable alternatives, the legislative determination is not necessarily conclusive. When the franchise is involved, the normal presumption in favor of the legislature is not as strong as it is in other cases. The Supreme Court has indicated more than once that "any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized."¹² *Harper* and subsequent voting rights cases established that statutorily imposed restrictions on voters run afoul of the equal protection clause if they are "irrational," "arbitrary," or "invidious"¹³ or if they are not "reasonable in light of

8. Principal case at 827-28.

9. *Shelton v. Tucker*, 364 U.S. 479, 488 (1960); see Note, *Constitutional Law—Police Power—Michigan Statute Requiring Motorcyclists To Wear Protective Helmets Held Unconstitutional*, 67 MICH. L. REV. 360, 366-67 (1968). This principle is supported by the general rule, stated in *People v. Armstrong*, 73 Mich. 288, 41 N.W. 275 (1889), that the state may impose restraints on the individual only to the extent which is required or necessary for the protection of public health, safety, or welfare. This seems to imply that if a statutory restriction is not necessary or essential—that is if there is another method to the same end that does not infringe a fundamental right—the restriction is invalid. Note, *supra*, at 366 n.35.

10. See note 1 *supra*.

11. See, e.g., *Dean Milk Co. v. City of Madison*, 340 U.S. 349 (1951), in which the Court stated that a municipality may not discriminate against interstate commerce, even in the exercise of its unquestioned power to protect the health and safety of its people, if reasonable nondiscriminatory alternatives, adequate to conserve local interests, are available. See also *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 163 (Justice Frankfurter, concurring) (emphasis added):

The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, *the available alternatives to the procedure that was followed* . . . the balance of hurt complained of and good accomplished—these are some of the considerations that must enter into the judicial judgment.

12. *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 667 (1966) [quoting *Reynolds v. Sims*, 377 U.S. 533, 562 (1964)].

13. *Avery v. Midland County*, 390 U.S. 474, 484 (1968) (extending the principle of the apportionment cases to local government elections); *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 666, 668 (1966).

their purpose."¹⁴ Thus, it is clear that state statutes that affect voting rights will be struck down despite the legislative presumption when they make invidious discriminations, are patently arbitrary, or are irrelevant to the achievement of the state's objective.¹⁵

Assuming that the courts will take a more active role in assessing legislative restrictions on the franchise, the task of determining whether voter qualification requirements are irrational, invidious, or unreasonable requires a careful evaluation of possible justifications on the basis of voting competence or interest in the election. Obviously, if neither justification appears to be particularly relevant to a given set of circumstances, the restriction is improper.¹⁶ Thus, if the property ownership qualification applied in the principal case can be justified realistically on one of these bases, it would be constitutional and the *Cipriano* decision would be correct.¹⁷

One justification for a property ownership qualification on voting rights is based on the traditional idea that property ownership is related to voting competence.¹⁸ The historical notion was that such a requirement would promote the intelligent and responsible use of the ballot. In colonial times, "property ownership and payment of taxes [were] the accepted symbols of community membership and interest."¹⁹ Professor Galbraith has stated that "[i]n the New World, as in the Old, it was assumed that power be-

14. *Carrington v. Rash*, 380 U.S. 89, 93 (1965).

15. *McGowan v. Maryland*, 366 U.S. 420 (1961); *Lassiter v. Northampton County Bd. of Elections*, 360 U.S. 45, 50-51 (1959).

16. The court in *Cipriano* appeared to disagree with this analysis. It noted that the standards of voting competence and interest in the result were applicable only in general elections and that they did not apply to special elections such as the one in question. According to this argument, a voter qualification for a special election would not violate the equal protection clause even if it did not meet one of these standards. In proposing this principle, the court relied on *Sailors v. Board of Educ.*, 387 U.S. 105 (1967), in which the scheme for selecting county school board members was challenged. In that case, local school boards were elected by popular vote of the residents of the district; no constitutional question was raised respecting those elections. The constitutional claim was based on the fact that the county board was chosen not by the electors of the county, but by delegates from the local boards, every local school board (irrespective of population, wealth, or other differences) having one vote. The Supreme Court ruled that this scheme was not inconsistent with equal protection and that municipalities could experiment in the selection of members of administrative agencies. The court in *Cipriano* found that the election to approve the issuance of bonds was not a general election but concerned only administrative functions of the municipality, and relied on the distinction made in *Sailors* to approve the property ownership requirement. However, the Court in *Sailors* indicated that "where a State provides for an election of a local official or agency—whether administrative, legislative, or judicial—the requirements of [equal protection] must be met . . ." 387 U.S. at 111. Although it did not go on to decide what the requirements of equal protection would be if there were to be elections for county school board members, there is no apparent reason for the special-election standard to depart from the criteria applied to general elections.

17. *But see* notes 9 & 11 *supra* and accompanying text.

18. The court in the principal case relied primarily on this justification. Principal case at 827.

19. J. PHILLIPS, *MUNICIPAL GOVERNMENT AND ADMINISTRATION IN AMERICA* 175 (1960).

longed, as a right, to men who owned land. Democracy, in its modern meaning, began as a system which gave the suffrage to those who had proved their worth by acquiring real property and to no others."²⁰

No state today has property qualifications for voting in general elections.²¹ Professor Phillips has described the abandonment of such limitations:

In time [however] leveling influences prevailed, and most Americans refused to accept the contention that there was a necessary relationship between property ownership or payment of taxes and interest in government or capacity to govern. North Carolina, in 1865, was the last state to abolish property ownership as a qualification for voting in state and national elections²²

Moreover, even by the end of the 1950's, only a few states required property ownership for voting on bond issues or special assessments.²³ The unanimous abandonment of property ownership as a prerequisite for voting in general elections and its apparently infrequent use as a test for voting in special elections weaken the purely historical justification for its present-day use. The same sort of historical and traditional justification was rejected by the Supreme Court in *Harper* when it was used in defense of the poll tax. Dissenting in that case, Justice Harlan restated the argument:

It is . . . arguable, indeed it was probably accepted as sound political theory by a large percentage of Americans through most of our history, that people with some property have a deeper stake in community affairs, and are consequently more responsible, more educated, more knowledgeable, more worthy of confidence, than those without means, and that the community and the Nation would be better managed if the franchise were restricted to such citizens.²⁴

20. J. GALBRAITH, *THE NEW INDUSTRIAL STATE* 52 (1968).

21. XVII THE COUNCIL OF STATE GOVERNMENTS, *THE BOOK OF THE STATES 1968-1969*, 30 (1968).

22. J. PHILLIPS, *supra* note 19, at 175.

23. *Carville v. McBride*, 45 Nev. 305, 202 P. 802 (1922) (state constitution construed to permit cities to impose property requirements in local bond elections); LA. CONST. art. 14, § 14(a); LA. REV. STAT. §§ 33:4252, 33:4258 (1950) (*see* note 1 *supra*); MICH. CONST. art. 2, § 6 (tax-limit increase or bond issue); MONT. CONST. art. IX, § 2 [creation of levy, debt, or liability; construed to apply only to debts or liabilities to be retired by ad valorem taxes in *Cottingham v. State Bd. of Examiners*, 134 Mont. 1, 328 P.2d 907 (1958)]; NEV. REV. STAT. §§ 387.365-.395 (property owners' veto of approval of school bonds), 539.123 (irrigation district elections) (1967); N.M. CONST. art. IX, § 10 (county elections on borrowing), § 11 (school district elections on borrowing), § 12 (elections to increase municipal indebtedness); S.C. CODE ANN. § 23-62(4) (1962) (alternative to literacy requirement in all elections); TEX. CONST. art. 7, § 3 (certain school taxes), art. 9, §§ 4-9, 11 (certain hospital taxes), art. 16, § 59(c) (certain conservation district bonds); UTAH CONST. art. IV, § 7 (property ownership requirement permissive in elections to create indebtedness or to levy special taxes).

24. 383 U.S. at 685.

Nevertheless, the majority concluded that "[v]oter qualifications have no relation to wealth nor to paying . . . this or any other tax."²⁵

Payment of a property tax, or property ownership, when employed as a device to promote the "intelligent" use of the ballot, is an anachronism. Today, there is no reason to believe that property ownership in any way enhances one's ability to exercise intelligent judgment in any election. Property owners are not necessarily better educated than others, and a literacy requirement would be a better device for measuring a potential voter's basic level of education or intelligence than would property ownership. Apart from considerations of education, there is no reason to believe that property owners are per se more responsible or more worthy of confidence than nonproperty owners. With increased mobility throughout our society—manifested especially by the large number of property owners employed by national public and private enterprises—it is by no means clear that property owners as a class have a greater stake in community affairs than those who do not own property.

However, in a case in which the election involves financing by increased property taxes, it might be argued that property owners would indeed be more likely to vote responsibly than those who do not own property. Nevertheless, when it is recognized that the property tax is generally not paid by property owners alone, but is often passed on to tenants,²⁶ this argument becomes questionable. Without the assumption that property owners alone pay the property tax, there is no fundamental difference between property owners and nonproperty owners that would make the former more likely to vote responsibly in such an election.²⁷ In short, it

25. 383 U.S. at 666. Whether or not the property tax qualification attacked in the principal case (as opposed to property ownership qualifications generally) is ipso facto unconstitutional by virtue of *Harper* is not clear, although such a conclusion is certainly within a literal reading of the words quoted in the text.

26. When the demand for rental housing is price inelastic, owners of such property will raise rents and pass on the increased tax promptly. D. NETZER, *ECONOMICS OF THE PROPERTY TAX*, 45-46 (1966). This would be the case especially with respect to multi-family units, owned and maintained for investment purposes; and this is the largest share of rental housing by property value. See also C. ADRIAN & C. PRESS, *supra* note 2, at 90: "Contrary to popular misunderstanding, a renter pays just as much in property taxes as an owner, although it is hidden in the rent."

27. There is some suggestion that while there is no economic difference between owners and lessees with respect to payment of property taxes, there may be a psychological difference. C. ADRIAN & C. PRESS, *supra* note 2, at 90. It may be true that property owners have a greater awareness of the burden of financing when the property tax is to be used to finance the improvement or expenditure authorized by an election. Nevertheless, the distinction is merely one of degree, and its magnitude cannot be demonstrated. Moreover, the common practice of landlords of justifying rent increases by virtue of increased property taxes weakens the claim that tenants are less aware of the relevant issues at stake in such an election. It should be noted, however, that the bond issue election in *Cipriano* did not present a case in which the property tax was to be used to finance the improvement. Principal case at 824; Judge Wisdom's dissent at 829; LA.

is impossible to find any significant connection between the ownership of real property and the ability to exercise the franchise intelligently and responsibly.²⁸ Consequently, any property qualification such as that in *Cipriano* seems to be irrational and arbitrary with respect to voting competence and the legislative presumption in favor of that qualification is thus overcome.²⁹

The property ownership requirement might still be justified, however, if it serves to separate citizens with a substantial interest in the outcome of the election from those whose interest is not substantial.³⁰ If the outcome of an election affects property owners alone, or if it affects them to a substantially greater degree³¹ than it does others, a property ownership qualification would not violate the equal protection clause.³² But it is clear that when the issue at stake in an election affects all citizens in much the same manner and degree, restricting the class of voters to property owners is arbitrary and, therefore, unconstitutional.³³

This type of analysis has been applied recently. In *Pierce v. Village of Ossining*,³⁴ a three-judge federal district court held that a restriction of the franchise to "owner[s] of property in the village assessed upon the last preceding assessment-role thereof"³⁵ was invalid. The issue at stake in the election was whether or not the village should change from a mayoral system to a village-manager system of government. In holding that this classification of voters was arbitrary and had no reasonable relation to proper qualifications for voting, the court declared:

The proposition on which plaintiffs have been excluded from voting would work a fundamental change in the village government where they live. Whether that change should be made affects all who live in the Village so that denying the franchise to those who do not own real property is an invidious discrimination.³⁶

CONST. art. 14, § 14(m). Consequently, any argument as to the greater responsibility of property owners by virtue of their financing of an improvement through the property tax, or their greater awareness of such financing, should have no bearing on the decision in the principal case. See text accompanying note 4 *infra*.

28. For a discussion of property ownership as a qualification on the right to hold elective town office and a conclusion that it is impermissible, see *Landes v. Town of North Hempstead*, 20 N.Y.2d 417, 421, 231 N.E.2d 120, 122, 284 N.Y.S.2d 441, 444, (1967). But cf. *Schweitzer v. Plymouth City Clerk*, 381 Mich. 485, 164 N.W.2d 35 (1969).

29. See notes 13-15 *supra* and accompanying text.

30. See note 5 *supra*.

31. See notes 43-45 *infra* and accompanying text.

32. See note 5 *supra*.

33. *Id.*

34. 292 F. Supp. 113 (S.D.N.Y. 1968) (unanimous decision by three-judge court).

35. N.Y. VILLAGE LAW § 4-402(b) (McKinney 1966).

36. 292 F. Supp. at 115. But see *Croen v. Vetrano*, 52 Misc. 2d 915, 277 N.Y.S.2d 354 (Sup. Ct. 1967) (sustaining a restriction on the right to vote in referenda on the question of incorporation of a village to owners of real property in the territory involved).

Thus, when all residents of a community have equal concern with an election issue, the fourteenth amendment demands that they have equal voice in the decision.

Conversely, when there is a substantial difference between the interests of various classes of persons and when a reasonable attempt is made to identify those classes which have a substantially greater interest in a particular election, the vote may be constitutionally denied to others.³⁷ In *Kramer v. Union Free School District No. 15*,³⁸ a resident of the defendant school district—a twenty-eight year old bachelor living in the home of his parents—launched a fourteenth amendment challenge against the provisions of the New York Education Law³⁹ which denied him the right to vote in school district elections. The statute provided that only residents who owned taxable real property, their spouses, lessees in the school district (but not their spouses),⁴⁰ and parents or guardians of children attending district schools had the right to vote in such elections. The majority of the three-judge federal district court found the statute valid as a reasonable attempt to limit the vote

to those district residents who, [the legislature] believes, have a direct interest in the administration of the school system because they are either real estate taxpayers (or renters of taxable real estate) and thus carry the burden of paying for a major share of the services provided by the school districts, or because they are directly involved as parents of pupils attending the schools in question.⁴¹

The interests recognized in the statute as qualifying residents to vote are clearly relevant to the issues presented in the election—electing members to the school board, approval of the budget, and levying taxes on taxable real property in the district to meet the expenses for the coming year.⁴² The classes enumerated in the statute have direct and substantial interests in those issues in addi-

37. See note 5 *supra* and accompanying text.

38. 282 F. Supp. 70 (E.D.N.Y. 1968) (2-1 decision), *prob. juris. noted*, 393 U.S. 818 (1968) (No. 258). The issue presented on appeal is whether N.Y. EDUC. LAW § 2012 (McKinney 1953) as applied to deny petitioner his right to vote in school district elections violates the equal protection clause or the first amendment as made applicable to the states by the fourteenth. The first amendment issue was not discussed by the lower court.

39. N.Y. EDUC. LAW § 2012 (McKinney 1953).

40. Since *Kramer*, the statute has been amended (effective June 16, 1968) to extend the vote to the spouse of "one who leases, hires or is in possession of a contract of purchase of, real property in such district liable to taxation for school purposes . . ." N.Y. EDUC. LAW § 2012(3)(a) (McKinney 1969). The constitutionality of the former provision extending the vote to spouses of owners of taxable real property while denying it to spouses of lessees of such property seems doubtful. However, the question was not raised in *Kramer* since the plaintiff had no standing to represent spouses of lessees.

41. 282 F. Supp. at 73.

42. N.Y. EDUC. LAW §§ 2021, 2022 (McKinney 1953).

tion to the general interest—which is all that could be asserted by the plaintiff—in educational policy and in the schools as socio-cultural institutions. Although it cannot be said that the plaintiff was completely unaffected by or disinterested in the issues decided by the school district elections, the substantial difference between his interests and the interests of those eligible to vote indicates that the *Kramer* decision is a sound one.

Another type of election in which the right to vote might be constitutionally restricted to a certain class of citizens—in this case property owners—is a special assessment election on the issue of whether to construct public improvements affecting property in a specific area.⁴³ Special-assessment financing generally assumes that the property adjacent to certain types of public improvements receives special benefits from the improvements; therefore, it imposes the burden of paying for this kind of improvement upon the owners of adjacent parcels of land.⁴⁴ It might be reasonable to restrict the right to vote on whether to construct public projects financed in this way to the same group of property owners.⁴⁵ However, if people who did not own property—for example, lessees of real property that was to be specially assessed—were affected in substantially the same way, the property ownership qualification could still be held unconstitutional. It might be argued that although lessees do share to some degree in the benefits and burdens, their interests are not nearly so great as those of the property owners. Factors which might be said to cause this difference in interest are transiency and investment of the property owner in the community in terms of the length of his connection with it and his direct payment of taxes. However, it is doubtful that property ownership is an accurate measure of connection with the

43. Special assessments for public improvements are special charges imposed by law on land to defray the expenses in whole or in part of a local improvement on the theory that the owner of the property has received special benefits from the improvement over and above the benefits accruing to the community in general. *See, e.g.*, *Fluckey v. City of Plymouth*, 358 Mich. 447, 450, 100 N.W. 2d 486, 489 (1960); *County of Westchester v. Town of Harrison*, 201 Misc. 211, 215, 114 N.Y.S.2d 492, 497, (Sup. Ct. 1951). This is not to say that there are no benefits outside the group whose property is assessed, but that this group has benefited specially by the enhancement of their property.

No state statute authorizing such a special-assessment election could be found, such assessments normally being made by the local legislative body. *See, e.g.*, M. HOWARD, *PRINCIPLES OF PUBLIC FINANCE* 298-99 (1940); W. WINTER, *THE SPECIAL ASSESSMENT TODAY WITH SPECIAL EMPHASIS ON THE MICHIGAN EXPERIENCE* 67-68, 98 (Michigan Governmental Studies, No. 26, 1952). Hence, it is posed here as a hypothetical.

44. *See* note 43 *supra*.

45. Although it is difficult to conceive of a situation in which a municipal improvement in a particular neighborhood would not have some incidental effects on other residents or property in the city, merely incidental beneficiaries with a small and intangible interest need not be allowed to vote. *See* note 5 *supra* and text accompanying notes 37-41 *supra*.

community or concern with the special improvement.⁴⁶ It must be reiterated that often lessees effectively pay the property tax⁴⁷ and share the benefits of improvements such as improved sewers, wider streets, or community parks; thus, it appears that the interests of lessees and property owners are likely to be identical. Moreover, it may be unrealistic to expect a state or local legislative body to establish adequate guidelines which would take account of all possible variations in the comparative interests of the two classes of residents. It may be impractical, therefore, to attempt to restrict the lessees' franchise so that they can vote only when their interests are exactly equivalent to the interests of property owners. Furthermore, such a determination should not be left entirely to the courts since the establishment of voter qualifications has traditionally been a legislative concern. Thus, it appears that the best course, consistent with both practicality and the equal protection clause, is to extend the franchise to lessees and property owners whenever the interests of the two groups in the burdens and benefits at stake in an election are generally similar.

Although the three-judge federal district court in *Cipriano* did not consider this standard, the case appears to be wrongly de-

46. Transiency may indeed be relevant in determining the degree of one's interest in a public improvement, but the usual method of taking account of this factor is to use a residency requirement. It is more direct and does not encompass considerations which are irrelevant to the concern; consequently, it should be used if the goal is to limit the franchise to those who have a relationship to the community of significant duration.

It might also be argued that one's investment in the community is to be inferred from the length of his connection with it, but again residence would appear to be the relevant consideration rather than the fact of property ownership. See *Shapiro v. Thompson*, 37 U.S.L.W. 4333 (U.S. April 21, 1969). This case stresses the restriction which welfare residence requirements place on the right to travel freely within the United States, 37 U.S.L.W. at 4336-37. It could be argued that residence requirements imposed on the franchise in special assessment elections have a similar effect; however, it seems clear that there is a significant difference in the magnitude of the effect. Perhaps one's participation in civic affairs is more indicative of a concern about the community than any of the foregoing considerations; but there is no necessary relation between such participation and property ownership.

With respect to payment of taxes as a measure of one's investment in the community, both property owners and lessees pay taxes, including the property tax. See note 26 *supra* and accompanying text. Although there may be some difference in degree with respect to the latter, such differences are not easily measured since the lessee's payments are merged in his rent. Consequently, any distinctions between property owners and lessees based on differences in degree of payment of property taxes would be administratively impracticable.

There is a difference in investments in the community in that the tenant's rent does not buy a permanent interest in the property. Yet the significance of this difference for the question of the restriction of the vote in special assessment elections is not clear. Public improvements may indeed affect the value of property in either direction. Whether property values increase or decrease, the fact that they are affected makes it doubtful that property owners are in the best position to pass exclusive judgment on the wisdom or desirability of a public improvement that also affects others.

47. See note 26 *supra*.

cided when the standard is applied. Property owners have no greater interest in the bond issue election involved in that case than do those residents who do not own property in the community. All residents of the city would benefit in substantially the same way from the construction of the utility, and because the utility was not to be financed by property taxes,⁴⁸ property owners would bear no more burden than other residents. Since the burdens and benefits were equal for all, the question was essentially a general one involving the administration of city affairs. And because property owners were no more concerned with or affected by the outcome of the election than were other residents, the property ownership qualification was clearly inconsistent with the demands of equal protection and should be invalidated.

48. See note 27 *supra*.