Land & Water Law Review

Volume 7 | Issue 1 Article 11

1972

Constitutional Law - One Man, One Vote - Application to Election of School District Trustees - Hadley v. Junior College District of Metropolitan Kansas City, Missouri

John Sundahl

CASE NOTE

CONSTITUTIONAL LAW—One Man, One Vote—Application to Election of School District Trustees. Hadley v. Junior College District of Metropolitan Kansas City, Missouri, 397 U.S. 50 (1970).

Hadley was a resident taxpayer of the Kansas City School District, which was one of eight school districts combined to form the Junior College District of Metropolitan Kansas City. Under a Missouri statute separate school districts could vote by referendum to estabish a consolidated district and elect six trustees to conduct and manage the necessary affairs of that district.[1]

In the consolidated school district the six trustees were to be apportioned among its eight component districts on the basis of each district's percentage of the total school enumeration, i.e., the number of persons between the ages of six and twenty who resided in the district.[2] A Missouri statute[3] provided that all six trustees would be elected at large, except that if the school district had more than one-third but less than 50 percent of the total enumeration of the proposed junior college district each such district would elect two trustees and the remaining four would be elected at large. Similarly, districts with more than 50 percent but less than two-thirds of the total enumeration would elect three trustees, and the remainder would be elected at large from the rest of the proposed district. If any school district had more than two-thirds of the total enumeration, such district could elect four trustees, and two trustees would be elected at large from the remainder of the proposed district.

The Kansas City School District had approximately 60 percent of the total school enumeration, but the apportion-

1. Mo. Ann. Stat. § 178.800 (1965) provides that in organizing a junior college district area, a petition which requests such organization must be presented to the state board of education. If the state board determines that the area proposed meets the standards of need, available taxable property, and sufficient number of students to attend, the board orders an election to be held on the proposal and trustees. The proposal to organize the district must receive a majority of the votes cast. If a majority is achieved, the consolidated district is declared to be organized, and the board then determines which candidates have been elected as trustees.
2. Mo. Ann. Stat. § 167.011 (1965).
3. Mo. Ann. Stat. § 178.820 (1965).

ment plan permitted election of only 50 percent of the consolidated district's six trustees.[4]

Hadley and other resident taxpayers of the district brought suit for declaratory judgment claiming that the statutory formula,[5] whereby trustees for the Junior College District were elected, unconstitutionally diluted and debased their right to vote in violation of the equal protection clause of the fourteenth amendment. The trial court dismissed the petition with prejudice[6] and the Missouri Supreme Court affirmed.[7] The Missouri Supreme Court rejected the application of "one man, one vote" because the Junior College District was essentially an administrative body created by the legislature for the sole purpose of conducting a college and that it was not a local unit having general governmental powers over the area it served. The United States Supreme Court, by a 6-3 opinion, reversed and held: when a state or local government decides to select officials by popular election to a position which performs governmental functions, the fourteenth amendment requires each voter be given an opportunity to have his vote given as much weight as that of any other voter, and an apportionment scheme must insure that, as far as practicable, an equal number of voters will vote for a proportionally equal number of officials.[8]

Before 1962 the United States Supreme Court carefully avoided any judicial interference in state apportionment plans on the ground that they involved a political question and therefore were not appropriate for judicial action. The determination of what constituted a representative form of government was left to the states,[9] and for the judiciary to enter the "political thicket"[10] would invade the scope of legislative authority. However, in 1962 the Court decided *Baker v. Carr*[11] and, in overruling the strong precedent established by *Cole-*

4. Hadly v. Junior College Dist. of Metro. Kansas City, Mo., 432 S.W.2d 328, 330 (Mo. 1968).
5. MO. ANN. STAT. § 178.820 (1965).
6. Hadley v. Junior College Dist. of Metro Kansas City, Mo., *supra* note 4, at 331.
7. *Id.*
8. Hadley v. Junior College Dist. of Metro. Kansas City, Mo., 397 U.S. 50 (1970).
9. Colegrove v. Green, 328 U.S. 549, 554-56 (1946).
10. *Id.* at 556.
11. 369 U.S. 186 (1962).

grove v. Green,[12] upheld a claim challenging the constitutionality of a Tennessee legislature apportionment plan. The Court ruled that the plan violated the Equal Protection Clause of the fourteenth amendment because it resulted in impairment by dilution of the right to vote. The two major points of the case were: (1) allegations of a denial of equal protection arising from a malapportioned legislative apportionment plan presented a justiciable cause of action; and (2) the equal protection clause provides discoverability and manageable standards for determining the constitutionality of a state legislative apportionment scheme if it appears that the discrimination involved reflects no policy, but only arbitrary action. *Baker* thus led the Courts into the "political thicket."

The slogan "one man, one vote" sprang from the language of Mr. Justice Douglas in *Gray v. Sanders*[13] in which he wrote, "The conception of political equality . . . can mean only one thing—one person, one vote."[14] In that case the Supreme Court nullified Georgia's county-unit system for primary elections in selecting state executive and administrative officers. The Georgia system was one of indirect nomination of candidates for the United States Senate, governor, statewide officers, justices of the state supreme court, and judge of the state court of appeals. It was also formulated to apply to the nomination of candidates for the United States House of Representatives if a congressional district's Democratic committee so determined. Under the county-unit system each county got a specified number of unit votes. Since nominations were determined not by popular vote but by unit votes, all the unit votes of a county went to the candidate with the popular plurality in that county. A plurality of unit vote was required to nominate except for governor and senator. In the absence of a majority vote in the gubernatorial and senatorial elections, a run-off primary was held. In case of a tie, the candidate with the greatest popular vote was elected. The greatest inequity of the system was that the populous counties were so under-represented in this apportionment scheme that the small, rural counties had a commanding voice in the nomi-

12. *Supra* note 9.
13. 372 U.S. 368 (1963).
14. *Id.* at 381.

nation process,[15] due largely to the Southern philosophy that the heart of representation and true democracy lay in the rural areas.[16] The court struck down the system on the following basis:

> Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote . . . wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment. The concept of 'we the people' under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications.[17]

In 1964 "one man, one vote" was extended by *Westberry v. Sanders*[18] to the state legislative districting plans for congressional elections involving invidious discrimination in the exercise of the voting franchise. Out of this case came a modification in the strict equality standard set forth in *Gray*.[19] Because the court realized that mathematical exactitude in balancing apportionment with equal voting power would be impossible, minor deviations were permitted, provided that they would not expand or contract the value of some votes in a discriminatory manner. Under *Westberry* the weight of each vote was to be balanced "as nearly as is practicable,"[20] thus giving districts some latitude and flexibility for apportionment purposes.

The case which firmly entrenched "one man, one vote" as a viable constitutional doctrine was *Reynolds v. Sims*[21] and its companion cases.[22] In *Reynolds* the Court struck down a malapportioned state legislature holding that the plaintiffs were denied their rights under the equal protection clause because there was serious discrimination against the voters in

15. On the basis of a 1940 population census, the apportionment was such that the least populous counties received almost 5½ times the total unit vote of the most populous counties. *See* KEY, SOUTHERN POLITICS 119 (1950).
16. *Id.* at 117-29.
17. Gray v. Sanders, 372 U.S. 368, 379-80 (1963).
18. 376 U.S. 1 (1964).
19. Gray v. Sanders, *supra* note 17.
20. Westberry v. Sanders, 376 U.S. 1, 7-8 (1964).
21. 377 U.S. 533 (1964).
22. Lucas v. Colo. Gen. Assembly, 377 U.S. 713 (1964); Roman v. Sincock, 377 U.S. 695 (1964); Davis v. Mann, 377 U.S. 678 (1964); Maryland Comm. for Fair Representation v. Tawes, 377 U.S. 656 (1964); WMCA, Inc. v. Lomenzo, 377 U.S. 633 (1964).

counties whose population had grown far more than others. In so holding, the Court said that the Constitution protected the rights of all qualified citizens to vote and to have that vote counted. The basic premise was that reapportionment is generally a voting case, and that

> [t]he right to vote freely . . . is the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.[23]

The Court accepted the idea espoused in *Westberry* that mathematical exactitude is not a workable constitional standard and that apportionment based on population as equal as practicable is permissible.[24] Moreover, the Court noted the first constitutional principles for determining when "one man, one vote" would apply.

> [T]he judicial focus must be concentrated upon ascertaining whether there has been any discrimination against certain of the State's citizens which constitutes an impermissible impairment of their constitutionally protected right to vote.[25]

The Court, after stating that such discrimination must be "invidious,"[26] refused to spell out any precise constitutional tests, and it indicated that its reason for doing so was to preserve flexibility in apportionment.[27]

Although *Reynolds* and its companion cases involved only the question of state legislative representation, the following statement indicates that the constitutional philosophy applied was broad enough to permit widespread expansion.

> [T]he basic principle of representative government remains, and must remain, unchanged—the weight of a citizen's vote cannot be made to depend on where he lives. Population is, of necessity, the starting point for consideration and the controlling criterion for

23. Reynolds v. Sims, 377 U.S. 533, 555 (1964).
24. *Id.* at 577.
25. *Id.* at 561.
26. *Id.*
27. *Id.* at 578.

> judgment in legislative apportionment controversies. A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution's Equal Protection Clause.[28]

This statement left the door open for further expansion of "one man, one vote." However, in 1967 the Supreme Court declined to extend the doctrine to the selection of city and county legislative bodies in *Dusch v. Davis*[29] because no invidious discrimination was shown to have existed.[30] In *Sailors v. Board of Education*[31] the Court held the equal-population principle also inapplicable to a board of education because the board performed administrative functions, *i.e.,* non-legislative functions, and those positions were basically appointive rather than elective.[32] *Sailors* set a concrete criterion for the nebulous equal protection doctrine of "one man, one vote"—that a state must make a good faith effort to construct election districts so that substantially equal voting weight is insured for elections. The new test for applying "one man, one vote" was whether the function of the body involved is legislative rather than administrative.[33] If the function was legislative, the doctrine would apply; if administrative, there would be no equal protection violation.

The question which necessarily arose from *Sailors* was whether application of "one man, one vote" could be made to traditional administrative bodies whose powers were derived by delegation from an elected legislative body. This question was partially solved in *Avery v. Midland County,*[34] which extended the doctrine to local government. The Supreme Court noted the increasing importance of local government in the lives of its citizens and held that because a constituency at-

28. *Id.* at 567-68.
29. 387 U.S. 112 (1967).
30. In *Dusch* the Supreme Court was confronted with the "Seven-Four Plan," under which four of eleven city councilmen were elected at large without regard to residence. The remaining seven were required to be residents of the borough from which they were elected, but were elected at large. Although the populations of the boroughs varied drastically, the Court held that the plan did not violate the equal protection clause because all councilmen were elected at large.
31. 387 U.S. 105 (1967).
32. *Id.* at 108, 111. The county school board members were appointed from elected representatives of the local school boards.
33. *Id.*
34. 390 U.S. 474 (1968).

taches enough significance to an office to make it elective, the equal protection clause should apply. The far-reaching extension of "one man, one vote" was accomplished by an analogy to reapportionment of the state legislative level; the Court saw little difference between the exercise of state power through legislatures and its exercise by elected officials on the local level. In other words, the fourteenth amendment was applied to state political subdivisions because actions of local government were actions of the state.

> When the State apportions its legislature, it must have due regard for the Equal Protection Clause. Similarly, when the State delegates lawmaking power to local government and provides for the election of local officials from districts specified by statute, ordinance, or local charter, it must insure that those qualified to vote have the right to an equally effective voice in the election process.[35]

Beyond the specific holding is the consideration that the Court neatly solved the problem in *Sailors* which arose from attempting to separate legislative from executive and administrative functions as a criterion for applying the Equal Protection Clause. Although the Court did not expressly overrule *Sailors,* it narrowed the application of legislative/administrative distinctions to that case's particular fact situation by changing the criterion for "one man, one vote" in the following manner:

> [T]he Constitution permits no substantial variation from equal population in drawing districts for units of local government having general governmental powers over the entire geographic area served by the body.[36]

Under this test the Court found that, since the powers of the Midland County Commissioners Court[37] included the authority to make a substantial number of decisions which affected all citizens, they performed enough general governmental

35. *Id.* at 480.
36. *Id.* at 484-85.
37. These powers include levying taxes, equalizing assessments, issuing bonds, maintaining the county jail, adopting the county budget, establishing a housing authority, building and running hospitals, airports, and libraries, and determining election districts for county commissioners. *Id.* at 476-77.

functions to bring the case within the purview of "one man, one vote."

The problem that *Avery* created was the definition of "general governmental functions" and to what degree this vague and subjective test would apply in individual units within local government. Although the first question remains partially unanswered, the issue of which units come within the test was involved in the case of *Hadley v. Junior College District of Metropolitan Kansas City, Missouri.*[38] Here the Supreme Court, using *Avery* as primary precedent, extended "one man, one vote" to the election of junior college school district trustees. Mr. Justice Black, writing for the majority, rejected the appellee school district's contention that for apportionment purposes courts should distinguish between elections for legislative officers and those for administrative officers. In doing so the Court reaffirmed the "governmental" test of *Avery.* The legislative/administrative criterion for distinguishing elections was deemed ineffective. Thus the Court discarded the old criterion of *Sailors* by saying:

> [T]here is no discernible, valid reason why constitutional distinctions should be drawn on the purpose of the election. If one person's vote is given less weight through unequal apportionment, his right to equal voting participation is impaired just as much when he votes for a school board member as when he votes for a state legislator. . . . [T]he crucial consideration is the right of each qualified voter to participate on an equal footing in the election process. It should be remembered that in cases like this one we are asked by voters to insure that they are given equal treatment, and from their perspective the harm from unequal treatment is the same in any election, regardless of the officials selected.[39]

By dismissing the contention of a legislative/administrative test, the Court thus indicated that neither the purpose of the election nor the type of public official to be elected should have any bearing on the right of a qualified voter to have equal voting power.[40] While there may be differences in the

38. Hadley v. Junior College Dist. of Metro. Kansas City, Mo., *supra* note 8.
39. *Id.* at 54-55.
40. *Id.* at 55.

powers of the various officials, an overlapping of functions precludes any suitable classification. Moreover, voting debasement arising from unequal apportionment results in impairment just as much when one votes for a school board member as when one votes for a state legislator.[41] The Court then stated the following rule:

> We therefore hold today that as a general rule, whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials.[42]

Henceforth, "one man, one vote" would apply to virtually all elections, no matter how insignificant. "One man, one vote" was extended to all elections were governmental powers existed for two basic reasons. First, there is a difficulty in attempting to distinguish elections of a legislative or administrative nature where no easily manageable standards exist; second, the importance of the right to vote equally is always worthy of protection because an election indicates the importance of the decision to the people. The Court made a significant extension of the doctrine, since it could have relied on *Avery's* reasoning exclusively, thereby avoiding the problem of further extension and qualification. Judge Seiler, in his dissenting opinion in *Hadley* at the Missouri Supreme Court level,[43] noted that *Avery* expressly applied "one man, one vote" to school boards.[44] The United States Supreme Court did not mention this specific reference, whether through neglect or intention, thus indicating the Court's refusal to be strictly bound by the confines of *Avery*. The ripeness for extension seemed to be at hand.

41. *Id.* The Court thus accomplished a smooth transition from state legislative apportionment in *Reynolds* to special-purpose units by equating voting impairment in both situations.
42. *Id.* at 56.
43. Hadley v. Junior College Dist. of Metro. Kansas City, Mo., *supra* note 4.
44. Avery v. Midland County, 390 U.S. 474, 480 (1968).

The one remaining qualification of the doctrine lay in the *Avery* criterion that there must be general governmental powers over the area served by the body; it is with this test that the consolidated school district was brought under "one man, one vote." The Court reasoned that because the trustees exercised many powers within the district (though not as great as those in *Avery*)[45] those powers were general enough and had enough impact on the whole district to fall within the scope of *Avery*.

Although the Court used *Avery* as primary precedent for bringing school boards within the purview of "one man, one vote," it appeared to modify the general governmental powers standard in two ways. First, the Court relaxed the standard by guaranteeing equal voting strength for each voter in all elections involving governmental powers.[46] There is a significant absence of the term "general" as used in *Avery*, which indicates that less governmental powers are now required to apply "one man, one vote." No longer must there be sweeping powers over the area to be served. It appears, however, that the Supreme Court, while bringing more elections within the equal population principle, eliminated the sole qualification of what constitutes permissible governmental powers. Consequently, it has left the courts and the legislature with an even less manageable standard than before and has complicated the evil it sought to remedy. This decision lessens the burden of showing governmental powers, but in doing so may have hampered the application of "one man, one vote." Second, the Court indicated that a somewhat less stringent standard of exactitude would be required where a special-purpose unit is involved due to inherent mathematical complications in equally apportioning such a small district.[47] However, in light of the court's emphasis on equal voting power regardless of the election or its purpose, it is difficult to justify a less stringent

45. Powers of the trustees include the power to levy and collect taxes, issue bonds with certain restrictions, hire and fire teachers, make contracts, pass on petitions to annex school districts, acquire property by condemnation, collect fees, supervise and discipline students, and, in general, manage the operations of the junior college. Hadley v. Junior College Dist. of Metro. Kansas City, Mo., *supra* note 8. *Compare* with the powers listed in note 37 *supra*.

46. Hadley v. Junior College Dist. of Metro. Kansas City, Mo., *supra* note 8, at 56.

47. *Id.* at 58.

standard in special-purpose units. Because of the court's determination that equality in elections should extend to all levels of government, mathematical complications would be of no consideration.[48]

The majority also noted that an exception to the "one man, one vote" doctrine would arise where

> a state elects certain functionaries whose duties are so far removed from normal governmental activities and so disproportionately affect different groups that a popular election in compliance with *Reynolds* ... might not be required.[49]

However, the Court gave no guidelines for determining what constitutes duties which are far removed from normal governmental functions and those which disproportionately affect different groups. By making qualifications for the exception vague, the court strengthened its primary position that equal voting power should apply to virtually all elections.

In its desire to avoid a totally pervasive doctrine which might be viewed as judicial legislation the area of representative government, the majority strove to provide flexibility in local experimentation and, as a consequence, established three ways in which legitimate political goals could be attained in spite of its ruling: (1) governmental units may initiate an election scheme requiring candidates to be residents of districts which do not contain equal numbers of people, provided elections are held at large; (2) members of an official body may be appointed rather than elected because then the official does not "represent" the people in the traditional voting sense; and (3) the vote may be limited to a particular class or group of people.[50]

Mr. Justice Harlan, with whom Mr. Chief Justice Burger and Mr. Justice Stewart joined, dissented, warning that application of the "one man, one vote" doctrine to junior college trustees would mean that the principle must be applied to every elective body, whatever its nature. The dissenters main-

48. For an excellent analysis of this point see 16 VILL. L. REV. 158, 167-68 (1970).
49. Hadley v. Junior College Dist. of Metro. Kansas City, Mo., *supra* note 8, at 56.
50. *Id.* at 58-59.

tained that such an extension would wrongfully result in the Court's moving further into the political thicket than it had already gone in *Avery*.

Mr. Justice Harlan contended that, in applying "one man, one vote" to school district trustee elections, the majority brought the pervasiveness of the federal judiciary into all phases of the state electoral process, without limitation. However, while it is true that the judicial entry is almost totally complete, the doctrine of equal population still retains its qualifications in a limited sense. "One man, one vote" will be inappropriate where powers exercised by a given elective body are so far removed from normal government that certain groups will be affected differently than others. This exception is ambiguous, but it does exist as a limitation on judicial interference. Of more importance is that voting is a fundamental political right, and if that vote is impaired by an election which results in discrimination toward some portion of the electorate, it will go unchecked unless the courts take initiative through the Constitution. That each vote is counted equally must be insured because the voting right is preservative of all rights. To do otherwise would destroy the foundations of representative government in that debasement or dilution of the weight of one's vote has the same effect as prohibiting that person to freely exercise the right of suffrage.

The dissent also drew a distinction between a local unit having governmental powers and a special-purpose unit.[51] The latter would vary in the magnitude of its impact and the manner in which its benefits and burdens interact in the political and economic picture. Mr. Justice Harlan argued that imposition of "one man, one vote" would deny local governmental units the flexibility needed to serve specialized functions which varied as local conditions changed.[52] His contention that special-purpose units have no substantial identity of function with state and local general governmental powers which justify the majority's positions fails to account for the idea that the powers of a special-purpose unit official, although limited, may be exercised over the area it serves[53]

51. *Id.* at 61.
52. *Id.* at 61-62.
53. Avery v. Midland County, *supra* note 44, at 485.

just as completely within its sphere as the governmental powers on the state and local level. Although the scope is different, the governmental powers over the area within its jurisdiction may be essentially the same.

The flexibility of which Mr. Justice Harlan spoke is certainly limited by the majority, but to allow local variations because of the impact of different benefits and burdens would only further complicate the problem of distinguishing between special-unit purposes, desired results, and minute factual differences. Also, the courts would be left without any standard which legislators could use for determining organizational districting in compliance with constitutional mandates. Consequently, the danger of abusing equal voting power would increase by legislative groping for permissible limitations. Legislatures should not be prohibited from experimenting so that more equitable government can be a reality, but such experimentation is more readily workable if conducted within definitely ascertainable boundaries.

The dissent also contended that the organization of the junior college district represented a "pragmatic choice by all concerned from a number of possible courses of action,"[54] and that such a voluntary arrangement could not be considered an unconstitutional dilution of votes. This reasoning fails to consider the rights of the injured minority. In all unconstitutional statutes, the arrangement is approved by a majority, *i.e.,* voluntary, vote. Mr. Justice Harlan assumed that a majority vote should be the controlling factor in the *Hadley* case, and that an affirmative vote by the electorate indicated approval of the plan by those voters affected. Voter approval may be a factor, though not controlling, in the area of voter qualification but only if the approval is based on a compelling state interest.[55] The voter qualification cases can be distinguished from the *Hadley* case, however, because they involved total disenfranchisement of a certain voter sector, whereas *Hadley* concerned only partial dilution of voting power. Constitution-

54. Hadley v. Junior College Dist. of Metro. Kansas City, Mo., *supra* note 8, at 65.

55. Phoenix v. Kolodziejski, 399 U.S. 204 (1970); Cipriano v. City of Houma, 395 U.S. 701 (1969); Kramer v. Union Free School Dist., 395 U.S. 621 (1969).

ality cannot be made to turn on voter approval except where a compelling state interest disfranchises an entire group of otherwise qualified voters.

Two questions remain unresolved by *Hadley*. First, the court gave no definition of "governmental powers." While keeping in mind that *Hadley* strove to apply "one man, one vote" to virtually all elections which involve governmental powers, the Court still limited itself so as to deny the doctrine's application where the powers involved were far removed from normal governmental functions and the exercise of the power affected groups differently. In other words, not only did the Court create the nebulous standard of "governmental powers," it also carved an equally nebulous exception out of the standard. The definitional problems were not met by the Court. Because there is no definition available, the only indication of what constitutes governmental powers must arise from the factual results in *Avery* and *Hadley*. *Avery* held "one man, one vote" applicable to the following general governmental powers: power to tax, issue bonds, adopt a budget, determine election districts, and equalize assessments.[56] *Hadley*, using the less stringent test of "governmental powers," applied the doctrine where the following powers existed: power to levy and collect taxes, issue bonds, make contracts, acquire property by condemnation, collect fees, and supervise students.[57] These cases possibly indicate that the power to tax and issue bonds constitutes sufficient governmental powers to apply "one man, one vote."

Subsequent lower court decisions have shed little light on the definition. Since *Hadley*, "one man, one vote" has been held applicable to the election of political convention delegates on the theory that political parties are, in effect, state institutions and governmental agencies through which sovereign power is exercised by the people.[58] This rationale stretches the doctrine to its extremes on the basis of very indirect "governmental" powers. A case which illustrates well

56. Avery v. Midland County, *supra* note 44.
57. Hadley v. Junior College Dist. of Metro. Kansas City, Mo., *supra* note 4.
58. Maxey v. Wash. State Democratic Comm., 319 F. Supp. 673, 378 (W.D. Wash. 1970). For a contrary view see Irish v. Democratic-Farmer-Labor Party of Minn., 399 F.2d 119 (8th Cir. 1968).

the situation in which slight governmental powers nevertheless brought the doctrine into play is *Dundee v. Orleans Parish Board of Supervisors of Elections.*[59] In that case, the functions performed by the elected Board of Assessors for the City of New Orleans were limited to a preliminary assessment of all taxable property and a computation of the amount of *ad valorum* taxes to be charged. Their decisions were subject to review and change by the Tax Commission. The Fifth Circuit Court of Appeals considered this to be sufficient governmental functions to apply "one man, one vote." The basis for the holding was not the nature of the duties of the assessors but rather that the impact created by the Board's decisions so directly affected the city that equal voting power was necessary.[60] The *Dundee* case together with the political convention cases[61] illustrate that governmental functions need not be directly exercised over the people; indirect and even contingent powers seem to be sufficient.

The Supreme Court in *Hadley,* by attempting to apply the equal protection requirements to almost all elections while trying to remain flexible, did exactly what it was trying to avoid—create unmanageable constitutional standards. By eliminating the sole qualification set forth in *Avery,*[62] it partially destroyed any hope of setting ascertainable standards for governmental units to follow. By swinging the door open to strained interpretations, the Court clouded the doctrine.

It may be possible that the Court deliberately made the constitutional criterion vague so that it could operate on a case-to-case basis, thus permitting more flexibility for local experimentation. Nevertheless, the ambiguity leaves the courts without concrete means to allow exceptions.

The Court did not consider what constitutes a valid apportionment, *i.e.,* whether apportionment must be made on general population, voter population, or some other basis. In *Hadley* apportionment was based on school enumeration—the number of persons between the ages of six and twenty who

59. 434 F.2d 135 (5th Cir. 1970).
60. *Id.* at 142.
61. Maxey v. Wash. State Democratic Comm., *supra* note 58.
62. The test of "*general* governmental powers over the area served by the body" was changed to "governmental powers."

resided within the district. The Court questioned whether school enumeration rather than actual population figures could be used as a basis of apportionment.[63] In *Burns v. Richardson,*[64] the Supreme Court upheld an apportionment scheme based on registered voters residing in the area as satisfying the equal protection clause "only because on [the] record it was found to have produced a distribution of legislators not substantially different from that which would have resulted from the use of a permissible population basis."[65] The Court stated that total population figures could constitute a distortion of the distribution of the state citizenry but that constitutional criteria are met if it appears that "the distribution of registered voters approximates distribution of state citizens or another permissible population base."[66] Although *Hadley* did not determine the constitutionality of the apportionment basis since the whole plan was declared unconstitutional, it indicated that an apportionment base must be equivalent to actual population figures. Beyond that, the question of what constitutes a valid apportionment basis remains unanswered.

In conclusion, *Hadley* permitted the entry of the federal judiciary into the "political thicket." In the nine short years of its existence the "one man, one vote" doctrine has grown from the embryonic stage of legislative reapportionment to local government and finally to special-purpose units within the local government structure. The United States Supreme Court has as its goal equality in all elections to insure the preservation of representative government and the means of accomplishing this goal lies with individual voting rights. The doctrine has undergone changes founded on the idealistic abstraction of representative government and analogies to related areas in arriving at the decision in *Hadley,* where the Court guaranteed the individual's right to have his vote count equally in all elections in which the particular elective body

63. Hadley v. Junior College Dist. of Metro. Kansas City, Mo., *supra* note 8, at 57.

64. 384 U.S. 73 (1966).

65. *Id.* at 93.

66. *Id.* at 95. *See* Ellis v. Mayor and City Council of Baltimore, 352 F.2d 123 (4th Cir. 1965) and Burns v. Gill, 316 F. Supp. 1285 (D. Hawaii 1970) where the courts considered registered voters apportionment to be more desirable than a total population base.

maintains governmental powers over the area to be served. True, the decision presents some definitional problems, but the logic of the Court was basically sound; since a decision is considered important enough to warrant an election, the attached significance in itself is sufficient reason to bring the election within the purview of the equal protection clause of the fourteenth amendment.

JOHN SUNDAHL