12-8-1976

Chesser v. Buchanan

NO. 27426

IN THE

SUPREME COURT

OF THE

STATE OF COLORADO

BETTY J. CHESSER, HELEN L. COULTER, JIM JORGENSEN, individually, and for and on behalf of all other persons similarly situated,

Plaintiffs-Appellants,

v.

MARY ESTILL BUCHANAN, Secretary of State of the State of Colorado; the ELECTION COMMISSION OF THE CITY AND COUNTY OF DENVER, the CLERKS AND RECORDERS OF THE COUNTIES OF ADAMS, BOULDER, GILPIN, GRAND, EAGLE, JEFFERSON, MOFFAT and ROUTT, STATE OF COLORADO,

and

MOFFAT TUNNEL COMMISSION, Intervenor,

Defendants-Appellees.

APPELLEES' BRIEF

J. D. MacFARLANE
Attorney General

JEAN E. DUBOFSKY
Deputy Attorney General

EDWARD G. DONOVAN
Solicitor General

MARY A. RASHMAN
Assistant Attorney General

Attorneys for Defendants-Appellees

1525 Sherman Street, Rm. 306
Denver, Colorado 80203
Telephone: 892-3611

December 1976

I N D E X

CASES

STATUTES

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BETTY J. CHESSER, HELEN L. COULTER, JIM JORGENSEN, individually, and for and on behalf of all other persons similarly situated, Plaintiffs-Appellants, v. MARY ESTILL BUCHANAN, Secretary of State of the State of Colorado; the ELECTION COMMISSION OF THE CITY AND COUNTY OF DENVER, the CLERKS AND RECORDERS OF THE COUNTIES OF ADAMS, BOULDER, GILPIN, GRAND, EAGLE, JEFFERSON, MOFFAT and ROUTT, STATE OF COLORADO, and MOFFAT TUNNEL COMMISSION, Intervenor, Defendants-Appellees.	APPELLEES' BRIEF

STATEMENT OF THE CASE

The plaintiffs, who are residents of the City and County of Denver, within the Moffat Tunnel Improvement District established by C.R.S. 1973, 32-8-101 et seq., brought this action on behalf of themselves and all other persons similarly situated, to challenge the limitation of the franchise in elections for the Moffat Tunnel Commission,

to "qualified electors who have paid a tax on real estate in said district in the year preceding the year in which any election is held. . . ." C.R.S. 1973, 32-8-103(3). The plaintiffs, and the persons whose interests they represent, did not pay a tax on real estate in the district in the year preceding 1976, and consequently, were not entitled to vote in the November 2, 1976 election for the Moffat Tunnel Commission.

The Denver District Court sustained the validity of the voter qualification statute, holding that it did not violate the equal protection clause of the fourteenth amendment to the United States Constitution, or article 5 § 25 of the Colorado Constitution. The district court also rejected the plaintiffs' contention that C.R.S. 1973, 38-8-103(3) conflicts with the provisions of the general election laws of the state of Colorado. The plaintiffs appeal from the district court's order.

SUMMARY OF ARGUMENT

I. The statute excluding nonproperty taxpaying residents from voting in Moffat Tunnel Commission elections does not violate the equal protection clause of the fourteenth amendment to the United States Constitution or article 5 section 25 of the Colorado Constitution.

II. The voting qualifications contained in the Moffat Tunnel Improvement District act do not conflict with the general election laws.

ARGUMENT

I.

THE STATUTE EXCLUDING NONPROPERTY TAX PAYING RESIDENTS FROM VOTING IN MOFFAT TUNNEL COMMISSION ELECTIONS DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION OR ARTICLE 5 SECTION 25 OF THE COLORADO CONSTITUTION.

The United States Supreme Court has declared that in elections involving special limited purpose districts, whose activities disproportionately affect landowners as a group, the equal protection clause is not offended by a rationally-based classification granting the franchise to property owners and denying it to nonproperty owning residents. Salyer Land Co. v. Tulare Water District, 410 U.S. 719 (1973). In Tulare, the high court answered the question, left open by earlier voting rights cases, of whether,

> . . . there might be some case in which a state elects certain functionaries whose duties are so far removed from normal government activities and so disproportionately affect different groups that a popular election in compliance with Reynolds [v. Sims, 377 U.S. 533 (1964)]. . . might not be required. . . .

Hadley v. Junior College District, 397 U.S. 50, 56 (1970). In Tulare, the supreme court found such a case, and established the rule that in such voting rights cases, the "rational basis" rather than the "strict judicial scrutiny" equal protection test applies.

In Tulare, which involved California water storage district elections, the court upheld a statute which limited the franchise to property owners, and apportioned the vote according to the assessed valuation of the land. In upholding

the legislative classification, the court emphasized two characteristics of the water storage district, which distinguished it from those districts and municipalities whose voter qualification statutes had previously been struck down by the court under the more rigid "strict judicial scrutiny" test: (1) "[t]he . . . district . . . although vested with some typical governmental powers, has relatively limited authority," (410 U.S. at 728) and (2) the district's activities ". . . disproportionately affect landowners." 410 U.S. at 729. These two factors, according to the court, distinguished Tulare from three earlier cases[1] in which statutes limiting the franchise to property taxpayers in local elections were invalidated because they failed to withstand the "strict judicial scrutiny" required where legislative classifications interfere with the "fundamental right to vote."

The supreme court in Tulare specifically rejected a claim that the California water storage district voter qualification statutes violated the equal protection clause because they excluded nonproperty owning residents from the franchise, as follows:

> Nor, since assessments against landowners were to be the sole means by which the expenses of the district were to be paid, could it be said to be unfair or inequitable to repose the franchise in landowners but not residents. Landowners as a class were to bear the entire burden of the district's costs, and the State could rationally conclude that they, to the exclusion

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[1] Phoenix v. Kolodziejski, 399 U.S. 204 (1970); Cipriano v. City of Houma, 395 U.S. 701 (1969), and Kramer v. Union School District, 395 U.S. 621 (1969).

> of residents, should be charged with responsibility for its operation. We conclude, therefore, that nothing in the Equal Protection Clause precluded California from limiting the voting for directors of appellee district by totally excluding those who merely reside within the district.

410 U.S. at 731.

The parallels between the water storage district involved in Tulare and the Moffat Tunnel Improvement District are obvious. First, the Moffat Tunnel district is organized for the limited purpose of constructing and maintaining a tunnel through the Continental Divide. Its powers are limited to those which are necessary to the accomplishment of that purpose. Thus it is authorized to construct and maintain the tunnel, to enter into contracts for its use, to issue bonds to pay for the construction of the tunnel, and to levy special assessments on all real estate within the district in proportion to the benefits received.

Secondly, the construction of the tunnel disproportionately affects the owners of real estate within the district, by conferring both benefits and burdens which are not shared by nonproperty owners. In creating the district, the legislature specifically declared that it would be ". . . of especial benefit to the property within the boundaries of the . . . district . . . ." C.R.S. 1973, 32-8-101. This declaration has been approved by both this court and the United States Supreme Court. Milheim v. Moffat Tunnel Improvement District, 72 Colo. 268, 211 P. 649 (1922), aff'd 262 U.S. 710 (1923). The legislature has also expressly declared that, ". . . the special benefits accruing to the real estate in said district . . . are in excess of the cost of the improvements provided

for in this article and in excess of the assessments provided for in this article against said real estate." C.R.S. 1973, 32-8-110(1).

Recognizing that special benefits accrue to the land within the district, the legislature has also imposed special burdens on that real estate. Thus, it has authorized the board to levy special assessments on all real estate within the district, in proportion to the benefits received, C.R.S. 1973, 32-8-110(2), and has provided for special assessments to be levied annually if necessary in order to pay the interest on and provide for the retirement of the district's bonds. C.R.S. 1973, 32-8-112.

It takes no particular expertise in economics to see that the value of property located within the district is increased by the location of the tunnel allowing for transportion and communication through the Continental Divide. Likewise it is obvious that the property owners within the district, who are subject to special assessments to pay for the tunnel,[2] assessments which if not paid, will become liens on their land pursuant to C.R.S. 1973, 32-8-117, bear burdens as a result of the operation of the district which nonproperty owners do not share.

Because of the similarities between the water storage district involved in Tulare and the Moffat Tunnel Improvement

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[2] Although no assessments have been imposed since 1971, because of the board's estimate that revenues from leases and investment income will sufficiently meet upcoming expenses, land owners are still liable for such expenses under the statute, should this estimate prove erroneous.

District, the defendants suggest that the supreme court's decision in Tulare should be dispositive in this case. As in Tulare, the appropriate standard to be applied is whether there is a "rational basis" for the classification drawn by the legislature, and not whether the statute can withstand "strict judicial scrutiny." As in Tulare, the legislature could have rationally concluded in this case that property taxpayers, whose land is specially benefitted and burdened as a result of the district's operations, should be entitled to vote in district elections, and that nonproperty owning residents, who do not share that special relationship with the district, should not be afforded that right. Since the classification drawn by the legislature is rationally based, it does not offend the equal protection clause of the United States Constitution or article 5 § 25 of the Colorado Constitution.

II.

THE VOTING QUALIFICATIONS CONTAINED IN THE MOFFAT TUNNEL IMPROVEMENT DISTRICT ACT DO NOT CONFLICT WITH THE GENERAL ELECTION LAWS.

The provision at issue in this case, reads in relevant part as follows:

> . . . such election shall be conducted in accordance with the general election laws of the state. Only qualified electors who have paid a tax on real estate in said district in the year preceeding the year in which any election is held shall be allowed to vote at any general election held under this article. . . .

C.R.S. 1973, 32-8-103(3). As the trial judge pointed out, the property qualification for voting for commission members

does not conflict with the general election laws. The section quoted above indicates that the general election laws are to govern, with the additional requirement that those voting be property taxpayers. Well established rules of statutory interpretation require that both provisions be given effect if possible. Reading the above-quoted provision, there is no necessary conflict, and both provisions can be given effect.

Sheldon v. Moffat Tunnel Commissioners, 355 F. Supp. 251 (D. Colo. 1971), cited by the plaintiffs does not stand for the proposition that the voter qualification statute at issue conflicts with the general election laws. A careful reading of the case shows that the judge was merely prefacing his disposition of the case on abstention grounds by looking at the statute in alternative ways. Consequently, the plaintiffs' contention with respect to the alleged conflict between the two laws must fail.

CONCLUSION

For the reasons stated, the defendants respectfully ask this court to affirm the district court's judgment, upholding the validity of the voting qualification contained in C.R.S. 1973, 32-8-103(3).

FOR THE ATTORNEY GENERAL:

Mary A. Rashman
MARY A. RASHMAN, No. 6446
Assistant Attorney General

Attorney for Defendants-Appellees

1525 Sherman Street, Rm. 306
Denver, Colorado 80203
Telephone: 892-3611

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was deposited with the United States Postal Service on the 8th day of December, 1976, addressed as follows:

Victor F. Crepeau
H. William Huseby
718 Colorado Building
Denver, Colorado 80202

Patrick R. Mahan
Jefferson County Courthouse
Golden, Colorado 80419

Charles W. Ennis
Suite 1500 - 1700 Broadway
Denver, Colorado 80202

Mary A. Rashman