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**Supreme Court of the United States**

OCTOBER TERM, 1968

Office-Supreme Court, U.S.  
**FILED**

JAN 23 1969

JOHN F. DAVIS, CLERK

**In the Matter of:**

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:  
MORRIS H. KRAMER, :  
:  
Appellant :  
:  
v. :  
:  
UNION FREE SCHOOL DISTRICT NO. 15, :  
ET AL. :  
----- X

**Docket No.** 258

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**Place** Washington, D. C.

**Date** January 16, 1969

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 October Term, 1968

3 - - - - - X  
4 Morris H. Kramer, :

5 Appellant :

6 v. :

No. 258

7 Union Free School District No. 15, et al. :  
8 - - - - - X

9 Washington, D. C.

10 Thursday, January 16, 1969

11 The above-entitled matter came on for argument at

12 11:10 a.m.

13 BEFORE:

14 EARL WARREN, Chief Justice  
15 HUGO L. BLACK, Associate Justice  
16 WILLIAM O. DOUGLAS, Associate Justice  
17 JOHN M. HARLAN, Associate Justice  
18 WILLIAM J. BRENNAN, JR., Associate Justice  
19 POTTER STEWART, Associate Justice  
20 BYRON R. WHITE, Associate Justice  
21 ABE FORTAS, Associate Justice  
22 THURGOOD MARSHALL, Associate Justice

23 APPEARANCES:

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1                   P R O C E E D I N G S

2                   MR. CHIEF JUSTICE WARREN: No. 258, Morris H. Kramer  
3 versus Union Free School District No. 15, et al.

4                   Mr. Fraenkel.

5                   ORAL ARGUMENT OF OSMOND K. FRAENKEL, ESQ.

6                   ON BEHALF OF APPELLANT

7                   MR. FRAENKEL: Mr. Chief Justice, and may it please  
8 the court:

9                   This is an appeal from a decision of a three-judge  
10 court in the Eastern District of New York, rejecting an attack  
11 on the constitutionality of Section 2012 of the New York educa-  
12 tion law brought by this plaintiff representing himself and  
13 others in the same class.

14                   It deals with the qualifications for elections in  
15 local school districts.

16                   This particular statute restricts the voting to  
17 roughly two groups of persons. The owners or renters of taxable  
18 real estate and their spouses, although at the time the suit was  
19 brought the spouse of a tenant was not qualified but has become  
20 so since, and parents of children attending the local schools,  
21 thus excluding persons like this particular plaintiff who is a  
22 bachelor living -- and adult, of course -- living with his  
23 parents, excluding also older people living with their children,  
24 excluding lodgers and boarders and excluding residents of  
25 property which happens to be non-taxable.



1           The majority of the court below upheld the law on the  
2 grounds that the interest of the taxpayers and parents was more  
3 direct than the interest of the other residents of the community  
4 and that the state, therefore, had the right to make that  
5 distinction.

6           Judge Weinstein wrote a long and to our view, of course,  
7 a most persuasive dissent.

8           Now the election system in New York with respect to  
9 schools is most bizarre. In a large city like New York, the  
10 school board is appointed although the projects for decentrali-  
11 zation of which the members of the court may have read and the  
12 new proposal by the Board of Education which has been much  
13 publicized would give all the residents of local districts the  
14 right to elect their local school boards.

15           In some of the other cities in New York, school  
16 boards are elected, large cities. In all cities in New York  
17 having a population of 125,000 or less, school boards are  
18 elected by the entire electorate. It is only in the so-called  
19 country and suburban areas such as the one here involved out  
20 on Long Island that there is this distinction and restriction  
21 to taxpayers and parents.

22           The state doesn't really support that distinction by  
23 anything in which in our view conforms to this court's most  
24 recent discussion of the question of equal protection in  
25 Williams against Rhodes where the court noted that it would

1 have to balance the interest of the state in the exclusion  
2 which it proposed against the interest of the person excluded.  
3 Here the interest of the person excluded is quite obvious.  
4 He is a resident of the community and particularly in modern  
5 times with the growing interest in education, the growing  
6 ferment not only among the community people but among the  
7 students themselves as to how their education should be handled,  
8 it would seem A priori that everyone in the community should  
9 have a right to participate in the election of the school  
10 officials provided there be any election at all.

11 This court having previously, of course, determined  
12 that a state would have such local officials appointed.

13 Q Mr. Fraenkel, the statute provides that only  
14 people with these qualifications shall be entitled to vote at  
15 any school meeting. Are these actually meetings or are these ---

16 A Yes.

17 Q Or are these secret ballots?

18 A No, there are meetings.

19 Q We are just talking about meetings?

20 A There are meetings at which the members of the  
21 school board are elected after nominations made by a certain  
22 number of qualified electors. They make the nominations.

23 And then there are also other matters which can be  
24 disposed of at these meetings, certain tax matters, certain  
25 matters relating to the ---

1 Q Having to do with the schools?

2 A Children out of the state, out of the district  
3 and things of that sort.

4 Q So these are actually meetings, and are they  
5 public meetings? Can anybody come to the meetings?

6 A So far as I know, yes.

7 Q And only these people can vote?

8 A Only these people can vote.

9 Q How often are these meetings held?

10 A That I don't know. I would suppose at least once  
11 a year, perhaps oftener. Actually being a resident of the city  
12 of New York I am not too familiar with what goes on in the  
13 suburbs.

14 Q And this does not involve ballot box voting?

15 A No.

16 Q It involves voting in an open meeting?

17 A That is right.

18 Q Which people did you say are permitted to vote?

19 A Roughly taxpayers and parents. In other words,  
20 the owners or renters of taxable real property and their  
21 respective spouses.

22 Q What about people under 21?

23 A And the parents of children attending school.  
24 No, they have to be qualified otherwise to vote in the state.  
25 They have to be over 21.

1 Q Can anyone over 21 vote?

2 A No, not in New York.

3 Q I mean in these elections?

4 A No. No, in addition to these restrictions on the  
5 electorate, the elector has to be a qualified voter in the  
6 state. Now, as I was saying, I would suppose that the interest  
7 of every resident of the community is clear.

8 What interest is it that the state is supposed to  
9 preserve by this restriction? It is rather difficult from the  
10 papers to determine what that is.

11 In one place it is stated that this is an essential  
12 restriction in order to prevent political maneuvering, but why  
13 or how this is so is difficult to understand.

14 Why in the districts in the country, political  
15 maneuvering is more suspect than in cities having under 125,000  
16 persons isn't made clear anywhere. And in those cities,  
17 everybody who otherwise qualified can vote.

18 Q But we are not talking about the right to vote  
19 that is provided by Federal law, are we?

20 A No, we are dealing here only with the question  
21 of equal protection of whether this is an improper discrimina-  
22 tion by the state; we are not dealing, of course, with voting  
23 for Federal officials.

24 Q Or any constitutional issue?

25 A Or any constitutional issue. We are dealing with



1 a matter that is local in the sense that school elections don't  
2 deal with all the subjects which a community is interested in.  
3 But, nevertheless, in my view, the matter of education is of  
4 such paramount importance that all members of the community  
5 have an interest in it and should be allowed to vote barring  
6 some specific reason.

7 Q You assume the burden here, I take it, of proving  
8 an invidious discrimination of the plaintiff?

9 A Yes and no. Of course, always the person who  
10 raises an equal protection point assumes the burden. On the  
11 other hand, once he has shown that there is a discrimination  
12 and that he has a strong interest, then I submit it is the  
13 burden of the state to come forward to show a justification for  
14 that discrimination.

15 Q Do you have any cases for that except in areas  
16 where certain particular interests are involved?

17 A Of course, the most recent application of it  
18 was in the Williams-Rhodes case where it is true that that  
19 dealt with Federal electors.

20 Q That is right.

21 A And for that reason this court may have -- if I  
22 may be permitted to say so -- stretched a little bit. Never-  
23 theless, it seems to me that the basic principle enunciated  
24 that where a discrimination has been shown ---

25 Q That isn't the normal equal protection law, is it?

1           A     There is the normal equal protection law deals  
2 mostly with taxation and routine things of that sort. I submit  
3 that when it deals with so fundamental a thing as voting and  
4 the poll tax case, of course, is another illustration.

5           Q     How long has this law been on the books?

6           A     Oh, generations. It has been changed from time  
7 to time by some amelioration. And it may be of interest that  
8 when the Constitution was proposed in New York in 1967, that  
9 Constitution would have expressly forbidden any such restriction  
10 in local elections.

11           That Constitution for many reasons was not adopted by  
12 the people as your Honor knows.

13           One of the arguments made here is that the statements  
14 justify in making this discrimination because those two groups  
15 are likely to be most interested and best informed. It seems  
16 to me the short answer to that is that anybody who wants to  
17 vote who lives in the community shows an interest, and shouldn't  
18 be deprived of that right.

19           It is also suggested in one of the briefs that there  
20 is a political process available to amend the law and that law  
21 from time to time has been amended. That may be true. Lord  
22 knows how long it might take. But that is I suggest no answer  
23 at all to any constitutional argument.

24           In every case where a statute is challenged denying  
25 the equal protection clause, it is, of course, possible to have

1 the statute amended whether it was a tax case or any other kind  
2 of a case.

3 It is also suggested in some of the briefs -- or I  
4 will put it this way -- horrible examples are produced at least  
5 in one of the briefs about what would happen if this restriction  
6 were removed.

7 It is said a child of eight from California could  
8 come and show an interest. That is, of course, nonsense.  
9 Because the basic requirement for voting in New York is a  
10 certain amount of residence in the state and in the district.  
11 And that provision is not being attacked in this lawsuit.

12 All that we are saying is that that provision as to  
13 the general voting qualification of New York should be  
14 applicable here.

15 It is also suggested that if this law is stricken  
16 down, there will be no law for school elections and that would  
17 produce chaos.

18 Now, of course, that is not true because all we are  
19 asking this court to do is to strike down the discrimination  
20 of the law. It is very easily accomplished because after the  
21 first portion of the law which says persons are qualified to  
22 vote in school elections who are qualified under the general  
23 law of the state and possess certain additional qualifications,  
24 all we are asking is, "and possess these additional qualifi-  
25 cations" be stricken. And that would leave the law in full

1 force applicable to the school elections in these districts  
2 but giving the right to vote in those districts to persons  
3 otherwise qualified to vote in New York.

4 So in sum, our position is that this plaintiff and  
5 others similarly situated have a vital interest in the subject  
6 matter being members of the community who want to vote and  
7 participate in the election of the school officials and that  
8 the mere fact that taxpayers and parents might have what might  
9 be called a more direct interest is no justification.

10 Indeed, one of the briefs goes so far as to suggest  
11 that if it were otherwise a theoretical delicate balance between  
12 the normal desire of taxpayers to keep school budgets down and  
13 the hopeful desire of parents of better education and better  
14 facilities and therefore increase the school budget, that that  
15 nice balance that might be preserved by the existing system  
16 would be thrown out if outsiders came in who were in need of  
17 financially prejudiced group, whereas on the contrary, it would  
18 seem to be in the general public interest that this possible  
19 theoretical deadlock would be resolved by persons having a  
20 general public interest in the education of the children and  
21 in all of the other aspects that arise in connection with local  
22 school elections because there are various collateral and what  
23 might be called fringe aspects to those situations, the local  
24 school board has great power in connection with the recreation  
25 facilities, libraries and things of that sort.



1           So we say here that the state has not shown anything  
2 to justify this discrimination and that the restrictive pro-  
3 visions of the law should be stricken the court.

4           Q     Mr. Fraenkel, in the papers before us, is there  
5 any place where I can look to discover what the powers of the  
6 school meeting are? In other words, on what subjects the vote  
7 would be cast?

8           Is there any comprehensive listing anywhere here in  
9 these papers?

10          A     The papers, the record is of course a very  
11 meager record.

12          Q     Yes.

13          A     It consists only of a bare complaint and a motion  
14 to dismiss. For reasons best known to itself the state did not  
15 take advantage of the opportunity afforded by a motion for  
16 summary judgment to bring in background material.

17          On the other hand, of course the education law of the  
18 state is a matter of which this court takes judicial notice  
19 and it has the provisions which deal with these matters and  
20 some of those provisions are referred to in some detail in  
21 various of the briefs.

22          In my own brief I refer to four or five sections of  
23 the New York education law which indicate the powers of the  
24 local boards.

25          Q     Do you have conveniently at hand a reference to

1 the sections of the education law that set out the powers of  
2 the local school meetings?

3 When you say the local board, do you mean the school  
4 meetings?

5 A The local school board which is elected.

6 Q I notice that Section 2012 which is involved  
7 here refers to voting at the school meeting.

8 A Yes.

9 Q And I really don't ---

10 A The school meeting does various things. It can  
11 as I indicate in my brief, the meeting under education law 2021  
12 and 2022 designates school sites; 2040 deals with the education  
13 of students outside the district; 2040A deals with migrant labor  
14 children and so on.

15 To some extent, this has been covered also in the  
16 opinion of the three-judge court at page 34 of the opinion --  
17 page 34 of the appendix I should say. In any event, the various  
18 provisions of the education law beginning with 2012 deal with  
19 these subjects.

20 I called those that I thought were the most significant.  
21 But it may well be that some other significant ones escaped my  
22 notice. They are all there. They are the only things. There  
23 is no background material. Some of the briefs go at great  
24 length into the situation in other parts of the state again  
25 drawing from state legislation although I must say regretfully

1 -- I say regretfully, I had nothing to do with those briefs --  
2 that they do not always cite the relevant statutes which deal  
3 with the problems.

4 Q Does this case involve anything except the  
5 challenges to the right to vote or voice?

6 A It involves the right to vote at a school  
7 meeting.

8 Q About what? Against what?

9 A The school meeting does a number of things. It  
10 can of course elect a local school board. It also has the  
11 power as I have pointed out in my brief and just now in answer  
12 to Mr. Justice Fortas' question, the school meeting also has  
13 the right to deal with certain financial matters, school houses,  
14 education of children outside the district and education of  
15 migrant laborers' children inside the district.

16 In other words, there are various things which a  
17 school meeting deals with at which these people would then have  
18 the right to vote, not merely the selection of the members of  
19 the board. It is pointed out in one of the briefs that if this  
20 court should agree with us, perhaps some of the powers of these  
21 meetings might be curtailed. And the legislature, of course,  
22 would have the right to do that but that is not anything with  
23 which I suggest this court need concern itself.

24 Q As on disciplinary rules at these meetings?

25 A No, no, the Board of Education presumably would

1 deal with all such matters. But, of course, the qualified  
2 electors not only vote for the members of the board but partici-  
3 pate in the nomination of members of the board. That is the way  
4 the nominations come up. It is by petition of qualified voters.

5 Q Where are the qualifications for the members of  
6 the board?

7 A There are none set forth that I have been able  
8 to find as to qualifications of members of the board. In any  
9 case, we are not concerned with that in this appeal.

10 Q Do these meetings have something to do with  
11 adult education?

12 A I don't think the meetings as such. The board  
13 can have something to do with determining the extent of adult  
14 education.

15 Q And libraries?

16 A And libraries. After all, certain basic things  
17 can be voted on. The rest is left to the discretion of the  
18 board which is elected by the voters.

19 Q At these meetings?

20 A At these meetings.

21 Q Mr. Fraenkel, I see on page in the opinion below  
22 on page 34 of the appendix statements that, "At this meeting"  
23 which is the meeting we are talking about, school meeting, "the  
24 voters approve the school budget."

25 A That is right.



1 Q "...and they vote to levy taxes on taxable real  
2 property."

3 A Yes, those are the sections that I referred to.

4 Q Yes.

5 And that they also -- the voters in each shool dis-  
6 trict, and I suppose it is at this meeting -- elect from their  
7 number three to nine trustees to act as the board of education  
8 for that district?

9 A That is right.

10 Q And that board of education is subject to a  
11 state-wide board of education?

12 A No, but in New York, the supervisory authority  
13 over the whole educational system is the Board of Regents and  
14 a Commissioner of Education. Your Honors may remember that in  
15 the recent New York City school crisis, Mr. Allen, State  
16 Commissioner of Education, intervened and appointed a trustee  
17 for the controversial Brownsville school and so on. They are  
18 the supervisory authority over the entire educational system  
19 of the state.

20 Q Well now the opinion below says that the Board  
21 of Education prescribes the course of study to be followed in  
22 the district schools.

23 A Yes.

24 Q Do they have authority to do that or is that  
25 determined by the state-wide Board of Regents?

1           A       Well, there are certain state policies which  
2 the Board of Regents lays down, certain new guide rules, as I  
3 understand it. Within those guide rules, each local board has  
4 a considerable amount of discretion.

5           That is one of the problems which we are being con-  
6 fronted with in the city of New York now, to what extent shall  
7 the newly proposed local boards have these powers. To what  
8 extent shall they be promulgated from above.

9           Q       So that really in reading that part of the opinion  
10 of the court below relating to the Board of Education of the  
11 particular district, we should read it, "The Board of Education  
12 for that district subject to the Board of Regents of the  
13 state"?

14          A       Subject to the general supervisory power of the  
15 Board of Regents and the Commissioner of Education.

16          Q       Which prescribes the course of study and tells  
17 the schools and so on?

18          A       For instance, if a question arises about the  
19 propriety of the action of a Board of Education on a matter  
20 of educational policy, that can be taken on appeal to the  
21 Commissioner of Education or if a constitutional principle is  
22 involved it can be taken directly to the courts of the state.

23          Q       Who appoints the State Superintendent of  
24 Education?

25          A       The Commissioner is appointed by the Governor.

1 Q What about the Regents?

2 A I am sorry. I misunderstood you. The Commissioner  
3 is appointed by the Regents and the Regents are appointed by  
4 the Legislature and the Regents appoint then the Commissioner  
5 of Education.

6 Q As I recall from looking into it several years  
7 ago, that is the most powerful agency in New York.

8 A It certainly is the most powerful educational  
9 agency.

10 Q I am not talking about education. It has control  
11 of the medical fraternity and the legal fraternity.

12 A Well, yes. Well, no, I don't think it has to do  
13 with the legal fraternity.

14 Q It does not?

15 A But it has to do with the doctors and many other  
16 agencies.

17 Q What about the librarians and the druggists?

18 A Well, I think that they have great powers in  
19 all of those areas.

20 Q They have people employed to see whether or not  
21 they are guilty of any offense and send them around over the  
22 State, don't they?

23 A That, I wouldn't know. Mr. Jehu can answer that  
24 because he is right from the department.

25 Q Well, I had occasion to look into it several

1 years ago and wrote about it, in a case, in this court, so to  
2 speak. It is pretty broad.

3 A Oh, yes, they have very broad powers. Of course,  
4 those powers are not involved in this litigation.

5 Q Well, it seems to me if you all are subject to  
6 a board like that that the people have nothing in the world to  
7 do with the selection. It might have something to do with the  
8 question you are raising.

9 Maybe I am wrong.

10 A The people who are qualified voters including my  
11 plaintiff, if this court agrees with me, can elect the members  
12 of their local board. Now, the fact that that local board may  
13 be subject to supervision no more affects the situation than  
14 the fact that in New York where the Supreme Court Justices which  
15 is the court of first instance are elected by the people, an  
16 appeal can be taken to the appellate division of the Court of  
17 Appeals which affects the importance of the election process of  
18 the judges so that here the fact that the Board of Regents can  
19 in some situations review actions by the local boards does not  
20 at all in my judgment affect the importance of the electorate.

21 Q It sounds to me like from what I read about that  
22 Board of Regents, your word is subject to supervision by the  
23 Board of Regents, is a rather euphemistic term.

24 A No, I think the Board can only -- well, anyway  
25 I submit that that is really not an issue in this case. Once



1 the legislature has said that a particular local body can be  
2 elected, then it seems to me that where that local body deals  
3 with a fundamental subject such as education, there should be no  
4 restrictions on the body of electors other than the general  
5 qualification to vote in the state.

6 Thank you.

7 MR. CHIEF JUSTICE WARREN: Mr. Jehu.

8 ORAL ARGUMENT OF JOHN P. JEHU, ESQ.

9 ON BEHALF OF APPELLEES

10 MR. JEHU: Mr. Chief Justice and may it please the  
11 court:

12 This is a very important case I believe and it is also  
13 I believe one of first impression.

14 It involves such matters as the relationship between  
15 a state and the Federal Government and also between the judiciary  
16 and the legislative branches. Now perhaps in answer to some  
17 of the questions, questions asked of Mr. Fraenkel I shall say  
18 this: That Boards of Education in school districts in the  
19 State of New York are autonomous units.

20 The statute sets for instance the requirements as to  
21 required subjects in the curriculum. Beyond that the local  
22 board of education can determine to add other subjects of  
23 their choice.

24 The Board of Regents and the Commissioner of  
25 Education, of course, have supervisory powers. The Commissioner

1 has particularly judicial powers of the school system where  
2 regular pleadings and oral arguments and briefs are filed and  
3 so forth and then the statutes in New York says its decisions  
4 are final and are not subject to review.

5 The courts of the state, however, have reviewed them  
6 all along. But in any event, the districts are very autonomous.  
7 There are over 800 school districts in the state. The statute  
8 here, 2012, and I might add to that also, requires three general  
9 qualifications together with one of three specials.

10 The three generals are residence, citizenship and  
11 majority. In addition to that, one of three qualifications  
12 have to bring a qualified voter to be qualified into the com-  
13 munity of interest in the school system which is a special  
14 purpose administrated to the non-legislative unit. All it does  
15 is administer the schools.

16 Under the general jurisdiction of the Education  
17 Department because under the State Constitution and the law in  
18 New York, education is a state function as it is under the Tenth  
19 Amendment. It is a state function.

20 Now to go into the problem of this particular case.  
21 This is a matter as I said under the Tenth Amendment of state  
22 concern only. There is nothing in the United States Consti-  
23 tution or in any act of Congress that guarantees to anybody in  
24 this country the right to vote at school district meetings or  
25 elections.

1 In answer to Mr. Justice Stewart's question before,  
2 the voting takes place either at town meeting types or at  
3 election types which is up to the local voters which way they  
4 want to handle it.

5 Q The statute seems to refer only to meetings,  
6 does it not?

7 A It may well be so, your Honor. I am not sure.  
8 But we have always read that to be meetings or elections.

9 Q They shall be entitled to vote at any school  
10 meeting. Well, that is the appellant's brief. I suppose those  
11 are his words and not the statutory words. I can't find the  
12 statute.

13 A The statute I think is set forth in the opinion  
14 of the court below as an appendix, I believe. Well, in any  
15 event, your Honor ---

16 Q I would be quite interested in seeing the  
17 statutes or having a reference to them.

18 MR. FRAENKEL: It is on page 2 of the appellant's.  
19 brief. It is quoted,

20 "A person shall be entitled to vote at any  
21 school meeting for the election of school  
22 district officers, and upon all other matters  
23 which may be brought before such meeting."

24 Then it goes on defining the qualifications.

25 MR. JEHU: We have it here. It is on page 4 of the

1 appendix, your Honor. It says, "A person shall be entitled to  
2 vote at any school meeting for the election of school district  
3 officers and upon all other matters which may be brought before  
4 such meeting," and so forth.

5 But other sections of the education law, for instance,  
6 2035, authorize them to use voting machines if they so see fit  
7 and if they can rent them from the town or village or county  
8 and they oftentimes do especially in the larger districts to  
9 save time.

10 Q You say this statute which seems to refer only  
11 to school meetings would be applicable to voting by voting  
12 machines?

13 A It is modified by other sections of the education  
14 law, your Honor; yes.

15 Q I understand this law does not -- is not  
16 applicable at all to two-thirds of the people in the state.

17 A That is correct, your Honor.

18 Q It is not applicable to the big cities and it  
19 is not applicable to the small ones?

20 A That is correct. And between the two of them,  
21 there are two groups of city school districts, which is more  
22 than two-thirds of the population of the state, some 11 million  
23 people by the 1960 census so that this is a fairly limited  
24 group, although there are a number of districts involved. Some  
25 are very small.

1           Some of the geographical units are very tiny. This  
2 is one of our problems, to try to get them together. But this  
3 is not the problem here.

4           Q     Would you forgive me, sir, but would you be so  
5 kind as to tell us as specifically and precisely as possible  
6 just what are the matters brought before the school meetings  
7 on which these qualified people vote?

8           A     Yes, your Honor.

9           The first thing they do, they have to have an annual  
10 meeting. This is a requirement of law. Every one of these  
11 districts involved here has to have an annual meeting, taking  
12 place in May, June or July by local option.

13          The first thing they do is they elect a Board of  
14 Education, a member each year or two members or whatever the  
15 rotation happens to be.

16          Secondly, they must adopt a budget for the operating  
17 expenses in the district for the ensuing year.

18          In addition to that, they can't have any number of  
19 other resolutions such as a purchase of a school bus or the  
20 building of some extra class rooms as they may be required or  
21 the putting up of a brand new building. They are matters of  
22 the administration of this school system of the local school  
23 system for the students residing in the district and to take  
24 care of their particular problems.

25          Now the Board of Education which is elected there has



1 certain powers and the powers of the Board of Education are  
2 set forth in 1709 of the Education Law, the powers of the  
3 voters in 2021 basically.

4 But there are various provisions all over the Education  
5 Law, some 2,000 sections altogether. It is a very complicated  
6 statute which right now we have a joint legislative committee  
7 to try and revise and simplify it.

8 Does that answer your question?

9 Q I am sorry, but it doesn't quite. Because it is  
10 a complicated education law and I am interested in finding out  
11 just as precisely as I can and with as little possibility of  
12 error as can be managed just what this voting right is of and  
13 concerning.

14 I know that it is a voting right that relates to the  
15 election of members of the Board of Education for the District.  
16 I know it is a voting right that has to do with the approval  
17 or disapproval of a budget presumably proposed by the Board of  
18 Education.

19 A That is correct.

20 Q What I would like to know is just what the  
21 specific subjects are as to which Mr. Fraenkel's client claims  
22 he should be entitled to vote. And I haven't found that in any  
23 of the papers before us. There is a general description in  
24 the opinion of the lower court and that is all.

25 A Well, Section 2021, your Honor, consists of some

1 20 or 30 subdivisions which indicates the powers of the voters.  
2 For instance, they have the power to regulate the affairs of  
3 the meeting itself. They have the power to vote taxes for  
4 various things.

5 There is another Section, 416 of the Education Law,  
6 which says that the voters have the power to levy taxes for  
7 teachers' salaries, for the building of school buildings, for  
8 the buying of school buses, for the buying of school property  
9 for playing fields and whatever the multifarious purposes of  
10 a school system are.

11 They have to hire janitors which is done by the Board  
12 of Education but the money, therefore, is appropriated by the  
13 voter. And to some extent teachers' salaries and a group of  
14 items known as ordinary contingent expenses, which is light,  
15 heat, water, telephone and that sort of thing, the Board of  
16 Education has the power to do that without reference to the  
17 voters.

18 If the voters vote it down the Board still does it  
19 because the schools have to be kept running. This is a  
20 constitutional requirement under Section 1 of Article 11 of the  
21 State Constitution.

22 In other words, all these voters do really -- this is  
23 the gist of it -- and there are many, many details, is that  
24 they must prepare, authorize, appropriate money so that the  
25 schools can be kept running. There are any number of things

1 now, of course, with machines being used for various data  
2 processing and all kinds of things, whatever it takes to run  
3 the schools. And that is all.

4 They have no power beyond that.

5 Q To which may be levied by the school district  
6 solely a tax upon real property?

7 A That is correct, your Honor.

8 Q I have just gotten a copy of the statute brought  
9 to me. And the statute does not indicate that it has to be a  
10 real property tax, does it?

11 A Well, the tax provisions were taken out of the  
12 State Education Law many years ago and put into the real  
13 property tax law. It would be in Article 13 of the real  
14 property tax law with all the different provisions. But all  
15 they have is the power to levy a tax on real property. Certain  
16 city school districts have the right to levy a utility tax.

17 Q You can't show me anything in this law ---

18 A In the Education Law?

19 Q Anything in the law that confines the tax powers  
20 of the school meetings that we are talking about to the levying  
21 of real estate taxes?

22 A Well, as I indicated, your Honor, this is no  
23 longer in the Education Law. It is in the real property tax  
24 law, which is a different volume.

25 Q I am looking at Section 2021. I am still trying

1 to find out what the powers of this meeting are.

2 A The powers of the meeting basically ---

3 Q That is what I am trying to find out. When you  
4 come to the power to tax, I want to know specifically in terms  
5 of the statute whether the taxing power is limited to levying  
6 of tax on real property.

7 Obviously the reason that I am interested in that is  
8 that the section at issue here, which is 2012, confines the power  
9 to vote to persons who own, et cetera, real property.

10 A Right. Well, the power to tax is limited in  
11 answer to your Honor's question absolutely and definitely to  
12 real property taxes. But that is not in the Education Law, but  
13 it is in another statute that the matter was transferred to.

14 Starting with Section 1300 of the real property tax  
15 law, I don't at the moment remember which one of the three or  
16 four sections following 1300 it is.

17 Q Does the state submit any of its tax receipts  
18 to the school districts for their operation?

19 A The operations of the school districts of the  
20 state are financed basically from the school tax, which is the  
21 real property tax. In addition to that, they get a great amount  
22 of state aid and that state aid and this will be part of my  
23 argument about some of the claims made here, that state aid is  
24 derived from a number of sources.

25 The state income tax and various corporation taxes

1 and there is a whole flock of sources. The budget is made up ---

2 Q I suppose -- do you have a sales tax?

3 A We have a state sales tax now, that is correct,  
4 which is also part of that. Then we have local sales taxes  
5 like New York City and some of the counties have sales taxes.  
6 But all of these things go into the state budget. And before  
7 that budget is made up, a new formula is made up, a state aid  
8 formula is made up almost every year and that formula determines  
9 how much the taxes will have to be brought into the state  
10 caucus in order to cover these various expenses, including  
11 education.

12 Q Do these people who are deprived of voting under  
13 this law have to pay those state taxes?

14 A Oh, indeed they do, your Honor.

15 Q Then they do contribute with their tax moneys  
16 to the support of these schools, do they not.

17 A The main part, if it please the Chief Justice,  
18 of my argument is this ---

19 Q Oh, I am not interested in your argument.

20 A No, on this point is what I mean.

21 Q I would just like to ask you if they are obliged  
22 to pay state taxes that are used to operate the schools?

23 A That is absolutely correct. And some of the  
24 Federal taxes go into that picture. But, what I am getting at  
25 is that he has never lost and does not now lose his franchise on



1 state legislation which determines how much of his tax money  
2 goes into the educational system. And he has not lost his  
3 franchise to elect a Senator of the United States or Congressman  
4 who in turn determine how much Federal money goes back to the  
5 state for schools. This he can vote on.

6 And this I think is a vital distinction in this case  
7 from some of the cases the court has recently decided.

8 Q It might determine how much he would be willing  
9 to put into the local budget, then, wouldn't it, depending on  
10 how much he was to get from the state?

11 A No.

12 Q Why?

13 A As I said ---

14 Q Why?

15 A The whole state aid formula is a most complicated  
16 kind of machinery. What the voters do is they merely authorize  
17 that district to spend, shall we say, \$5 million for their  
18 schools. And that authorization to spend then has to be  
19 covered by an estimate of how much they will get from state aid,  
20 how much Federal aid will they get and how much will they get  
21 from other various sources of income such as tuition and so  
22 forth, and then they deduct that and the difference the Board  
23 of Education levies in taxes on the real property in the  
24 district.

25 Q Might not a person who is voting at this meeting

1 say, "Well, in view of the fact that the state gives this much  
2 money to the schools for this purpose, we don't need much. We  
3 only need a very little bit. So we will only vote to spend  
4 so much in the district?"

5 A Well, the vote, your Honor, is not on the total  
6 amount. The vote is on the authorization for specific items  
7 for certain purposes.

8 Q You might say in view of subvention from the  
9 state, we don't need these things.

10 A Oh, there is no question, your Honor, that this  
11 whole system has caused difficulties in the state.

12 Q All right.

13 Well, then doesn't the person who pays the state  
14 taxes also have an interest in how much he will provide for the  
15 district for school purposes?

16 A I don't think, your Honor, I don't think that is  
17 so. Because he has to pay the state and Federal taxes regard-  
18 less of whether it is spent in this district or it will go to  
19 Oklahoma or California. If that district doesn't spend it,  
20 somebody will, and the total amount is the same either way.

21 Q Why do you give the right to vote to the tax-  
22 payers who are owners of property?

23 A Well, may I point ---

24 Q What are the reasons for that?

25 A May I explain this.

1 Q Would I assume it is because they are interested  
2 in how their money is spent? Would that be one of the reasons?

3 A This may well be one of the reasons.

4 Q Why exclude a bachelor who might be the highest  
5 taxpayer in the country?

6 A Because he is not a member of the community  
7 of interest.

8 Q Because he is not interested in what happens to  
9 his tax money?

10 A No.

11 Q Suppose the law said only Republicans can vote.

12 A That would be an invidious discrimination.

13 Q Why?

14 A Because there is no relation between the purpose  
15 of a statutory objective of the legislature and the way they  
16 are doing it. In other words, a Democrat ---

17 Q What is the relationship for excluding a bachelor?

18 A Well, he is not being excluded because he is a  
19 bachelor. He is excluded because he has absolutely no ---

20 Q He is excluded because he is not married?

21 A No. He is excluded because he has absolutely  
22 no interest in the school system.

23 Q Why not?

24 A His children are not affected because he has no  
25 children.

1 Q But his money is?

2 A Just a minute if I may, your Honor. The first  
3 part is the fact he has no children. In other words, whether  
4 he votes for or against something, if he could, it wouldn't  
5 affect his children. He has none.

6 Now the other thing is, it doesn't cost him a penny  
7 from the real property tax which is the only thing -- direct  
8 taxation that he can vote on. He can't vote on how much state  
9 aid the district gets or how much Federal aid. That is taken  
10 care of by his use of the ballot and by electing state and  
11 Federal legislators who will determine that for him.

12 Q But if he was a bachelor and a pauper, but a  
13 tenant, he could vote?

14 A He could vote. Absolutely.

15 Q Now what interest does that man have? This  
16 bachelor who is broke and just happens to be a tenant, what  
17 interest does he have?

18 A Well, the question really, your Honor, is this:  
19 In the first place, do we have to meet a test such as we had  
20 in the Cardona case. Now in Cardona, we had this Mrs. Cardona  
21 who was disfranchised by this statute. And she could not in  
22 any way do anything about it because being disfranchised she  
23 had no access to the franchise to change that statute.

24 Here on the other hand, we have a person who is not  
25 disfranchised on state legislation. If he wants to change a

1 2012 he can go and vote for people who will go and change it.  
2 And I might say in this connection, while this lawsuit was  
3 going on, as a matter of fact, some of the things that were  
4 criticized below have been amended.

5 The spouse of the tenant which Judge Weinstein said  
6 should not be excluded and I think Judge Hays has long since  
7 been put in by the legislature. The statement was made that  
8 there are so few of these people that the legislative processes  
9 will not be adequate and at the same time it was done.

10 And we have, as I pointed out in our supplemental  
11 brief, there is now a constitutional amendment again before the  
12 State Legislature to eliminate all of these special things.  
13 But the purpose of it all, and this is to answer your question,  
14 Mr. Justice Marshall, in order for the Legislature to make sure  
15 that this extremely important business of elementary and  
16 secondary education is properly determined on the local basis  
17 where it has to be determined under state law, we must make  
18 sure that those people who get the franchise on that are those  
19 people who can reasonably be expected to be interested enough  
20 in it to spend a considerable amount of time necessary to  
21 really inform yourself on these very complicated questions.

22 Q Let me ask you this question.

23 Q I beg your pardon.

24 Q Let me ask you this question. Suppose the  
25 appellant in this case was a school teacher instead of a



1 stockbroker. And he was boarding in a home. Would you presume  
2 to say that he had no interest in the public schools sufficient  
3 to enable him to be a voter?

4 A May I make two answers to that, your Honor. One  
5 is, the mere fact that he is interested or knowledgeable, for  
6 all we know he may have written all the books on education,  
7 but the legislature cannot anticipate when they make the rule  
8 that those persons who are not in the category, that is the  
9 two categories we are talking about, will have naturally and  
10 foreseeably the kind of interest which will guarantee a  
11 reasonable decision on school matters.

12 Q Let me ask you just one more question along that  
13 line.

14 A school teacher or any other person not being a  
15 real property taxpayer who is retired and living with one of  
16 his children -- maybe he has a large family and has reared them  
17 and put them through the public schools, paid all their  
18 expenses, and they now have grandchildren. And he is living  
19 with one of those children.

20 Do you say that that person would not have sufficient  
21 interest in the public school system of his district to vote?

22 A I would say, your Honor, that they are properly  
23 excluded here because the parents themselves, that is the  
24 children of the people we are talking about, whose grandchildren  
25 are involved, do have the franchise, but the interest of these

1 other people is purely theoretical just like I have a tremendous  
2 interest in good education in Mississippi right now.

3 Q I am talking about this specific case. You say  
4 that he hasn't sufficient interest to vote?

5 A Unless he is assessed for a school tax. If he  
6 rents a garage, for instance, or if he owns a home, then obvi-  
7 ously he has the kind of interest that the Legislature  
8 reasonably can be expected to base a decision on as to who shall  
9 vote and who should not.

10 Q Let me ask just one more question.

11 A Yes, sir.

12 Q You say because he pays no taxes, would you now  
13 -- if we sustain this, could you also say that unless he paid  
14 \$10,000 in taxes a year, that he wouldn't be eligible to vote?

15 A Your Honor, it isn't the question of payment of  
16 taxes. All he has to be is assessed. Now if he refuses to  
17 pay taxes, being assessed, he may not lose his property for two  
18 years and he votes all of this time.

19 Q Let us say assess. Unless he is assessed for  
20 that much, you could put a limit on the amount of taxes he pays?

21 A If we did that, your Honor, we would run into  
22 Harper and properly so that would be impermissible because  
23 wealth as you have pointed out in Harper has no relation to use  
24 in the franchise. This is put in merely to make sure that we  
25 have those people, those groups, who can reasonably be expected

1 to have a serious interest, serious enough to give it a great  
2 deal of thought. And may I add one more item before the time is  
3 up and that is this: We are not dealing here with a question  
4 of state or Federal or even municipal balloting, franchise  
5 and representation, and consequently, when the Chief Justice in  
6 Reynolds said clearly rational state policy is insufficient  
7 because of the central importance of general elections, and I  
8 emphasize general, this is not here applicable.

9 So, consequently, the only test we do not need would  
10 be the sterner test of Justices Douglas and Fortas mentioned  
11 in their dissent in Cardona. The only test we have is tha  
12 have some reasonable relation between what the state is trying  
13 to do and what the statute does.

14 Q In that connection I would be very interested in  
15 having a citation of authority for your submission that the  
16 power to tax is only the power to impose taxes on real property.  
17 Could you submit that in writing?

18 A I will indeed, that, sir.

19 MR. CHIEF JUSTICE WARREN: We will recess now.

20 MR. FRAENKEL: I will supply the court with copies  
21 or a text of the relevant sections of the education and other  
22 laws dealing with various questions which have been raised  
23 during the argument.

24 MR. CHIEF JUSTICE WARREN: That will be very helpful.

25 MR. FRAENKEL: I will do that sometime next week.

1 MR. CHIEF JUSTICE WARREN: We will recess now.

2 (Whereupon, at 12 o'clock noon the Court recessed,  
3 to reconvene at 12:30 p.m. the same day.)  
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1 AFTERNOON SESSION

2 (The oral argument in the above-entitled matter was  
3 resumed at 12:30 p.m.)

4 MR. CHIEF JUSTICE WARREN: Mr. Jehu, you may continue  
5 your argument.

6 ORAL ARGUMENT OF JOHN P. JEHU, ESQ.

7 ON BEHALF OF APPELLEES (resumed)

8 MR. JEHU: Thank you, your Honor.

9 The first thing I would like to refer to in these last  
10 few minutes is that the first rationale of this statute,  
11 Section 2012, means that these people have more information and  
12 have more of an interest in getting the information.

13 You take the parents. They are continuously bombarded  
14 by various circulars and leaflets that the school sends home  
15 with the children. Here is what we are trying to do.

16 The same thing is true with these taxpayers. They  
17 are on the tax list and the assessment list and they send them  
18 certain things in order to make them vote for whatever they need.

19 Q What about the school teacher that I asked about  
20 who is boarding in some home?

21 A She is not enfranchised here, that is true.

22 Q Can she vote?

23 A Well, if she is not a renter or owner of taxable  
24 property and she has no children in school, she cannot vote.

25 Q Yes, she is a boarder, and not a general taxpayer.



1 A If she pays no rent, then she cannot vote.

2 Q You put it on the interest now that they might  
3 have and they are better able to have an interest, would you  
4 say that she is less able to have that interest?

5 A On the interest, your Honor, that the Legislature  
6 can't foresee that such people will have. She happens to be  
7 a teacher. The legislators can't foresee that boarders will  
8 be teachers. There might be a few. But the class as a whole  
9 wouldn't be involved.

10 And may I say this, the qualification, of a residence,  
11 which is universal, this court has upheld it a number of times.  
12 I am not talking about Carrington now.

13 Q What percentage of the voters attend these  
14 meetings?

15 A That is a difficult question to answer, your  
16 Honor. In my district which is out in the country, we have  
17 voted as many as 6,000 when we built a new high school, a  
18 controversial thing. When you vote on \$4 million budget, there  
19 is 200 or 300 people come out. It is not good.

20 Q Very low percentage.

21 A It is, yes.

22 Q Well, would I assume that all the people that  
23 are not there are not interested?

24 A I can't answer that question, your Honor.

25 Q What is not good, the fact that you have this few?

1 A That we have a low attendance, that is right.

2 Q That you have as many as 6,000 voting?

3 A No, I think every voter could turn out. That  
4 is the privilege of this country to vote on things, you see.  
5 That is why they should turn out.

6 But to come back to this, residence is something  
7 which everybody has agreed is a proper voting qualification.  
8 Why? Because a resident can be reasonably expected to be more  
9 closely exposed to the problems of the area, of the unit,  
10 whatever unit it is.

11 He is more closely exposed to the candidates, the  
12 facts involved. Therefore, I urge the court to assume as I do  
13 that this gives more knowledge, more interest in terms of  
14 information, more intelligently informed electorate.

15 The second point is that we have here a party  
16 political problem. We are trying to keep party politics out of  
17 the school system. Now we have different times of the year to  
18 vote and we have different voting qualifications. That is the  
19 first line of defense against encroachment of party politics.  
20 Here is how it happens.

21 We had in the city school districts, the smaller ones,  
22 they changed this to the normal voting qualifications.

23 Q Tell me, what percentage of the people over 21  
24 would you say would be disenfranchised by this?

25 A A fairly small number, I think.

1 Q Very small, wouldn't it? Almost everyone rents,  
2 pays some rent or owns a home and all?

3 A That is right.

4 You see the difference in voting qualifications makes  
5 it impossible, it throws this May, June or July meeting into  
6 November. And the minute you change those qualifications, that  
7 is exactly what happened in the smaller 56 city school districts.

8 It is why can't we save the money instead of having  
9 the meeting ---

10 Q Well, this is really the state's interest then?

11 A This is part of it.

12 Q This is really, because I can't imagine you are  
13 really having any substantial interest in keeping this small  
14 percentage of people from participating in the meetings as  
15 compared to such a large group anyway and such a small group  
16 that really attends.

17 A Well, Mr. Justice White, I see that this is a  
18 thing about which reasonable men can and will differ. But all  
19 I am really getting at is that the state here has broad powers.  
20 As Mr. Justice Stewart pointed out in Carrington, Mr. Justice  
21 Douglas in Lassiter and Harper, they have a broad interest  
22 unless they violate something guaranteed by the United States  
23 Constitution.

24 They should be given the latitude.

25 Q But with this device anyway there is some

1 justification for having a special election?

2 A Indeed, yes. And as I say, most city schools  
3 this is when bills after bills were introduced clear into  
4 November.

5 Q That would be after all, it is different in  
6 another way in a sense that you have a meeting. It isn't a  
7 ballot box affair.

8 A It doesn't make any difference from that stand-  
9 point on how it is done, whether I raise my hand or I pull a  
10 lever on a machine, I express my wishes.

11 These technical details I don't think affect the  
12 argument one way or the other.

13 Q Oh I know, but in terms of having a special  
14 election or whether it would go into the general election or  
15 not ---

16 A Well, you see, in other words, we have had times  
17 in the State of New York where a teacher had to pay X dollars  
18 to the party caucus or whoever was in power. In New York City  
19 it used to be that the Bureau president used to determine who  
20 teaches and what they get. Now they eliminated that by this  
21 Board of Examiners and they appoint the first three on the list.

22 And now we are trying to get the parents back into  
23 the picture in New York with this decentralization because the  
24 parents do have an interest. That is why I am saying this is a  
25 very reasonable and very closely connected statute to the

1 objective that the state has in mind.

2 May I give two examples of the kind of thing they vote  
3 on. Districts sometimes do not have a high school or senior  
4 high school. So they make a contract with District A or  
5 District B and they vote on whether to send them over here or  
6 over there. By the handful of children in the school, what  
7 difference does it make where those kids get sent?

8 You could say all right, District A charges \$800  
9 tuition and District B charges \$1,000. So he has an interest  
10 if he pays, but he doesn't. So no matter how you slice it,  
11 he has actually no interest and if he has no interest I don't  
12 see how he can be protected by the United States Constitution.

13 I might say this also in answer to a question by the  
14 Chief Justice. The tax that this man pays is not affected  
15 whatsoever.

16 Q What?

17 A The tax that the appellant pays to the state and  
18 the Federal Government is not affected in any way by what this  
19 district does because the amounts appropriated go out no matter  
20 what. They are set on a state level. And his local tax can't  
21 be affected because he pays none.

22 Q As I understand it, in New York City, the Board  
23 of Education is appointed and the other cities are not under  
24 this scheme.

25 A That is correct, your Honor.



1 Q The Board of Education supported by the Mayor or  
2 the Council.

3 A Right.

4 Q Who approves the budget?

5 A The Board of Estimate in New York. A City  
6 Council by the Board of Estimate.

7 Q Who elects the Board of Estimate?

8 A I am no expert in that but I think it is the  
9 people.

10 Q It is the people generally. So in New York City  
11 you don't have this restriction?

12 A Well, in New York City, your Honor ---

13 Q The people who are defined in this statute. Is  
14 the same thing true with respect to the other powers? In other  
15 words, in these cities you said it is two-thirds of the popu-  
16 lation I think that are not under Section 2012. You don't have  
17 this limitation of the constituency of the educational system.

18 Is that correct?

19 A Nobody votes on school matters, that is right,  
20 in those places.

21 Q Everybody votes, though. Everybody votes on  
22 school matters. There is no distinction between the electorate  
23 for school matters and the electorate for city matters  
24 generally?

25 A It is an indirect process, your Honor.

1 Q All right, but you understand what I mean.

2 There is no provision setting up in those jurisdictions, those  
3 cities, there is no provision setting up a specially defined  
4 electorate for school matters?

5 A That is correct. People don't really vote for  
6 the Mayor because of who he puts on the Board of Education.  
7 Some might.

8 But anyhow, may I just quote, to finish, Mr. Justice  
9 Douglas. He said, and I quote, "There is no group more  
10 interested in the operation and management of the public  
11 schools than the taxpayers who support them and the parents  
12 whose children attend them."

13 That is exactly what this statute does.

14 Q Who said that?

15 A Mr. Justice Douglas. And Doramus. And I might  
16 say and we now have five judges have agreed with a rationality  
17 of this statute and we have the Court of Appeals of the State  
18 of New York has passed on this question also, in the Turkle  
19 matter.

20 In addition we have Mr. Justice Douglas stating as  
21 it did and Mr. Justice Brennan in Moyum and any other conclusion  
22 would mean that they are blind to the realities with which the  
23 legislature of the state is familiar.

24 And so I submit that the judgment should be affirmed.

25 Thank you.

1 MR. FRAENKEL: May I have just about two minutes?

2 REBUTTAL ARGUMENT OF OSMOND K. FRAENKEL, ESQ.

3 ON BEHALF OF APPELLANT

4 MR. FRAENKEL: In the first place, I don't expect that  
5 this court is much persuaded by the counting of judicial  
6 noses in courts below.

7 This court has shown a great recognition of its  
8 peculiar function. I don't think that argument should be  
9 considered.

10 As to this business of being informed because material  
11 is sent, but, of course, if everybody could vote the material  
12 would be sent to all the other people who could vote.

13 I suggest, therefore, that none of the consideration  
14 -- the special election business -- I suggest has no meaning  
15 at all. Because if that is an important consideration which  
16 the state wants to preserve, all it does is make that mandatory  
17 on the school district. That is not in the least effective  
18 by the nature of the electorate at the election.

19 And finally, I think it was a little inaccurate when  
20 my opponent said that in the cities the voters do not vote  
21 for school boards. That is true in the large cities. It is  
22 not true in cities of under 125,000 because there all  
23 qualified voters do vote for the boards of election.

24 Q Mr. Fraenkel, how do you explain the state's  
25 great interest in this matter in the sense that ---

1           A     I don't.

2           Q     In the sense that the electorate is already very  
3 large and there is not a great turnout at meetings anyway and  
4 there won't be a very large number of people affected by this  
5 law?

6           A     I am frankly at a loss to understand why the  
7 state should be concerned because as Your Honor says, the number  
8 affected in most districts would be relatively small. It is  
9 conceivable that there are some districts which have peculiari-  
10 ties, a large number of people perhaps are living in tax exempt  
11 residences, something of that sort.

12                But normally the number would be small and it could  
13 possibly have no significant effect on the policies which the  
14 state is interested in. But they do oppose our position and  
15 therefore the burden is on this court to resolve it.

16                Thank you.

17                Oh, I assume that the material which I offered to  
18 send can be sent here. It doesn't need to be printed?

19                MR. CHIEF JUSTICE WARREN: Yes, you may send it that  
20 way.

21                MR. FRAENKEL: Thank you.

22                (Whereupon, at 12:47 p.m. the oral argument in the  
23 above-entitled matter was concluded.)  
24  
25