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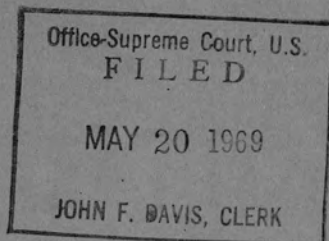
# Supreme Court of the United States

OCTOBER TERM, 1968

In the Matter of:

Joseph Q. Cipriana,  
Appellant,  
vs.  
City of Houma, et al.,  
Appellees.

Docket No. 705



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Place Washington, D. C.

Date April 24, 1968

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C O N T E N T S

ORAL ARGUMENT OF:

P A G E

Kenneth Watkins, Esq. on behalf of  
Appellant

2

E. E. Huppenbauer, Jr., Esq. on  
behalf of Appellers

17

REBUTTAL ORAL ARGUMENT OF:

P A G E

Kenneth Watkins, Esq. on behalf of  
Appellant

36

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 October Term, 1968

3 ----- x  
4 Joseph Q. Cipriano, :

5 Appellant, :

6 v. :

No. 705

7 City of Houma, et al., :

8 Appellees. :  
9 ----- x

10 Washington, D. C.

Thursday, April 24, 1969.

11 The above-entitled matter came on for argument at

12 10:30 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

POTTER STEWART, Associate Justice

17 BYRON R. WHITE, Associate Justice

18 ABE FORTAS, Associate Justice

THURGOOD MARSHALL, Associate Justice

19 APPEARANCES:

20 KENNETH WATKINS, Esq.

Watkins, Watkins & Walker

21 415 Goode Street

Houma, Louisiana

22 (Counsel for Appellant)

23 E. E. HUPPENBAUER, JR., Esq.

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24 New Orleans, Louisiana 70112

(Counsel for Appellees)

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

2                    MR. CHIEF JUSTICE WARREN: No. 705, Joseph Q.  
3 Cipriano, appellant, versus City of Houma, et al.

4                    THE CLERK: Counsel are present.

5                    MR. CHIEF JUSTICE WARREN: Mr. Watkins.

6                    ORAL ARGUMENT OF KENNETH WATKINS, ESQ.

7                    ON BEHALF OF APPELLANT

8                    MR. WATKINS: Mr. Chief Justice and may it please  
9 the Court.

10                   This case presents the question as to whether or not  
11 this court's decision in Harper versus Virginia State Board  
12 of Elections applies to a local revenue bond election limited  
13 to property taxpayers who have no special interest in the  
14 election which would warrant a limitation.

15                   The facts of this case may be briefly stated as  
16 follows: This suit was brought by Joseph Q. Cipriano as a  
17 class action. Mr. Cipriano is a resident of and a duly regis-  
18 tered and qualified voter in the city of Houma, Louisiana.

19                   The plaintiff does not own any real property in the  
20 city of Houma nor does he pay any property taxes on any such  
21 property.

22                   On October 24, 1967, an election was held pursuant to  
23 the statute challenged in this suit to authorize the issuance of  
24 utility revenue bonds. Under the applicable statute the  
25 election was specifically limited to resident property



1 taxpayers. Appellant and all similarly situated persons were  
2 prohibited from voting in this election by the effect of the  
3 statute.

4 The purpose of the election was to obtain authorization  
5 from the electorate to issue \$10 million worth of utility  
6 revenue bonds with which to expand the utility system of the  
7 city of Houma. The election received a favorable vote by the  
8 property taxpayers.

9 Of the 11,606 registered voters in the city of Houma,  
10 4,680 are property taxpayers. Of that latter number, 2724  
11 actually voted in this election; 1828 voted in favor of this  
12 proposition, 896 against it.

13 The appellant brought his suit within the 60-day  
14 period allowed and provided for by Louisiana statute and con-  
15 tested a constitutionality of the voter classification or  
16 qualification.

17 The trial court in a divided opinion with a dissent  
18 by Justice Wisdom rejected appellant's contention and from  
19 that decision of a three-judge court the appellant appeals  
20 to this court.

21 Q Under the law a simple majority of the property  
22 owners is sufficient, is it?

23 A Under the law it is required, your Honor, that  
24 there be a majority in both number and amount as we shall  
25 point out, in number of taxpayers voting and a majority of the

1 accessed property owned by those taxpayers who are actually  
2 voting.

3 Q That wasn't clear to me. Yes.

4 A All revenue it is important to note, all revenue  
5 derived from the operation of the utility system over and above  
6 that first revenue dedicated to repaying the bonds goes into  
7 the general fund of the city of Houma and is used for general  
8 city services.

9 Now we make special note of the fact that this is a  
10 utility revenue bond election as distinguished from bonds which  
11 are payable from the proceeds of property or ad valorem taxes.

12 The applicable statutes provide that the revenue  
13 bonds authorized by this election shall be repaid exclusively  
14 and solely from the income derived from the operation of the  
15 utility. We maintain that by this limitation it is conceded  
16 effectively precludes or prohibits the imposition or use of  
17 any tax money to repay these bonds.

18 Additionally, the statutes also provide that the  
19 full faith and credit of the issuing authority is not at stake.  
20 Only the pledged revenues of the utilities are allowed to  
21 secure the repayment of these bonds.

22 As I shall show, a property owner has no greater  
23 stake or interest in this election than a nonproperty owner as  
24 neither his property nor his property rights can in any way be  
25 affected by the outcome of this election.

1 Now, the statutes of the State of Louisiana which  
2 require the ownership of property we maintain therefore  
3 invidiously discriminate in this instance against the appellant  
4 and members of his class which together comprise 60 percent of  
5 the registered voters of the city of Houma.

6 Firstly, as I have stated the property owner as such  
7 incurs no liability contingent or otherwise for the repayment  
8 of the bonds. Secondly, as a user of utilities, which property  
9 owners and nonproperty owners alike use, he incurs no peculiar  
10 liability as neither the property owner nor his property is in  
11 any way peculiarly liable for the service or utility charge  
12 or for the connection charge.

13 It is a contractual obligation in Louisiana between  
14 the user and the supplier.

15 Thirdly, if the proposition to be voted on is eco-  
16 nomically sound and this would result in an increase in revenues  
17 over and above the bond repayment funds going into the general  
18 city coffers so to speak, this is beneficial to all taxpayers  
19 and all residents in the city of Houma.

20 If on the other hand the proposition were to prove  
21 economically unsound, resulting in less money going into the  
22 general fund this would adversely affect all citizens as  
23 additional tax money may be necessary to run the city.

24 Since over 90 percent of the total money generated  
25 as revenues for the city of Houma, well over 90 percent, come

1 from sources other than property taxes we maintain that the  
2 greater interest lies with that group or classification who  
3 pays more than 90 percent of the funds into the general treasury  
4 of the city.

5 And this would be the general electorate and the  
6 general citizenry of the city of Houma, the property owner,  
7 a review of the stipulation of facts at page 19 and 20 of the  
8 single appendix, paragraphs 7 and 8, together with the official  
9 audit of the city of Houma.

10 Now the official annual audit for the city of Houma  
11 for the year ending September 30, 1968, shows the gross  
12 revenues of the city. And this official audit, of course,  
13 covers the period of this election which was October '67  
14 through that same period in '68.

15 When these two items are combined and analyzed it  
16 shows that property owners paid substantially less than 10  
17 percent of the total revenues of the city.

18 We believe that the case of Harper versus Virginia  
19 State Board of Elections is controlling in this instance.

20 Q You really would be making the same argument  
21 if these were general obligation bonds?

22 A I don't believe it is necessary for me to go  
23 that far, your Honor, in the sense that we can show here  
24 that there is absolutely no relevancy and no possibility of  
25 a tax being used.

1           Q     Your arguments really are applicable to the  
2 general obligation bonds?

3           A     They may be, your Honor, to both. But in the  
4 Harper case this court was concerned with the requirement of  
5 the payment of a poll tax as a qualification to vote. In  
6 this case we are concerned with the requirement of a payment  
7 of a property tax as a qualification to vote.

8                 In the Harper case this court declared that voter  
9 qualification has no relation to wealth nor to the paying or  
10 not paying of this or any other tax. In fact, we maintain that  
11 the present case presents to this court an easier question  
12 than did Harper.

13                Now the dissenting Justices in Harper suggested that  
14 the State of Virginia may have had a valid interest in the  
15 poll tax either in deciding to collect additional revenues or in  
16 believing that the voters who paid the poll tax comprised a  
17 group which may have been more interested in the general  
18 welfare of the State.

19                Under the fact of the present case neither of these  
20 contentions can be taken seriously here. As I have illustrated  
21 the property owning taxpayer has no interest in the outcome  
22 of the revenue bond election greater than any other voter. In  
23 fact, as a group they have decidedly less interest as they pay  
24 less than 10 percent of the total revenues of the city of Houma.

25           Q     Mr. Watkins, have these bonds been issued and  
sold?



1           A     Sir?

2           Q     Have these bonds been issued and sold?

3           A     No, sir, your Honor. We filed our suit within  
4 the 60-day statutory provision allowed by the Louisiana law  
5 to challenge such an election and so actually no rights have  
6 become vested in this case nor have any bonds been sold, nor  
7 has the question become final.

8           Q     What, in your judgment, suppose we should agree  
9 with you, what in your judgment would be the effect or might  
10 be the effect of our adjudication upon outstanding revenue  
11 bond issues?

12          A     Well, without wishing to presuppose any judgment  
13 which the court may render, I would suggest as we have in our  
14 reply memorandum, your Honor, that if this court were to  
15 agree with us that it may limit if you will -- it may first of  
16 all grant us the relief we pray for for this class action in  
17 that no rights have become vested here nor have any bonds  
18 issued nor did the matter become final.

19          We suggested in our reply brief that the court may  
20 limit the retrospective effect of its decision to those cases  
21 where rights have not become final or where bonds have not  
22 been issued.

23          As an example, I think we may have pointed out, your  
24 Honor, if the election had actually been held and the full  
25 time for challenge had passed, and the local authority may have

1 then gone on planning as they must preplan, we appreciate that,  
2 there would be no manifest ill or no adverse effect by allowing  
3 that one to stand since the time for challenging had passed.

4 Obviously where bonds have been issued the same rule  
5 would apply as rights have become vested.

6 Q In other words, you think that in a constitu-  
7 tional decision that we might make could in the first place be  
8 made nonretrospective and in the second place it would not  
9 disturb vested rights at least where the time for challenge in  
10 the State law had already passed?

11 A I think the court clearly has the authority to  
12 give its decision that effect. They can grant us the relief  
13 prayed for as no rights have become vested nor the matter was  
14 not finalized, and the court could limit the effect of its  
15 decision to those cases where rights have not become vested  
16 and where it has not become final.

17 Q I would suppose that in other kinds of situa-  
18 tions we have just recognized to side aside elections?

19 A Sir?

20 Q We haven't in some cases set aside elections  
21 once they have been held even if they were held under an  
22 unconstitutional apportionment. We have just recognized them  
23 by de facto.

24 A Right. Yes, your Honor, I appreciate that and I  
25 can sincerely differentiate between the dire consequences the

1 court might have encountered in saying that we will hold a  
2 completely legislature ill apportion and, therefore, all acts  
3 passed are invalid, rights may have become vested, the court  
4 has an obligation to preserve order and I think this was to  
5 a large extent the court's concern, preserving the due processes  
6 of order, so to speak.

7 In this case this does not occur, your Honor. No  
8 rights have become vested ---

9 Q Oh, I understand. I understand this case. I  
10 am talking about elections that have already been held.

11 A Well, where ---

12 Q And bonds have been issued.

13 A Where the bonds have been issued as we have  
14 spoken with Mr. Justice Fortas, where bonds have been issued,  
15 rights have become final and vested and we see no difficulty  
16 in the court limiting the effect of its decision clearly to  
17 those cases where rights have not become vested, such as in this  
18 case.

19 Q We don't need to do it in terms of retrospective  
20 effect of a constitutional decision, do we?

21 A I am sorry, sir?

22 Q We don't need to do it in terms of retroactivity  
23 or prospectivity, do we?

24 A I am not sure, your Honor, in which terms you  
25 may have to do it. This is one suggestion only of a way in

1 which you may do it in keeping with what we consider the ruling  
2 of this court in the Linkletter decision. It is an analogy  
3 to the application of this court of the Mapp decision in the  
4 Linkletter case.

5 We may additionally point out in this case, your  
6 Honor, that not only is the qualification of paying a tax  
7 violative of the Fourteenth Amendment as set forth in the  
8 Harper case but the qualification of wealth is given added  
9 emphasis.

10 In this case the property tax presupposes the  
11 ownership of property, in addition to the payment of this  
12 tax and the degree of wealth is even made a factor in the  
13 present case by the statutory requirement that the proposition  
14 be voted favorably upon by a majority in number of voters and  
15 a majority in the assessed valuation of the property owned by  
16 the voters.

17 Therefore, the wealthier vote is given a weighted  
18 effect. The wealthier man has a weightier vote.

19 Q The richest man in town may not own any real  
20 estate at all.

21 A That is correct, sir, but if this rich man  
22 owns real estate he is given a weighted vote. The court below  
23 surmised possible rational purpose for the limitation. And  
24 we submit that absolutely none exists for the three reasons  
25 that we have previously given this court.

1 Appellees have previously advanced the suggestion  
2 that the legislative purpose for the distinction in this voter  
3 classification was, and I quote, "The desire to place a check  
4 upon borrowing by governmental units," at page 5 of the trial  
5 brief.

6 We submit that if that classification was permissible  
7 it has no relevance whatsoever to the purpose of this legis-  
8 lation. To the contrary, the total absence of liability  
9 peculiar to the taxpayer or to his property effectively  
10 invites him to vote with more or less unrestrained enthusiasm.

11 Exhibits P-1 through P-7 clearly show that the pro-  
12 ponents of the bond issue constantly advise the taxpayers that  
13 a favorable vote would protect his low property tax rate and  
14 no new taxes could be added.

15 In the present case, all citizens have an equal  
16 proprietary interest in revenues, equal proprietary interest  
17 in city-owned properties; all citizens pay taxes into the  
18 general fund.

19 As we have shown a comparison of the 1968 audit or  
20 the fiscal year ending September 30, '68, together with the  
21 stipulation of facts shows that well over 90 percent of the  
22 revenues are paid by the general electorate or the general  
23 citizenry.

24 Now we maintain that there is absolutely no justifi-  
25 cation, your Honor, for this classification as set forth in



1 this particular statute. I may call to this court's attention  
2 the fact that a casual comparison as we have set forth in our  
3 brief of the three different sections of Chapter 10 of the  
4 title 33, of the Louisiana revised statutes, indicate that the  
5 legislature provided three different methods for submitting  
6 the same general proposition to the voters.

7 Subsection B provides for a bond election, sub-  
8 section D and subsection C -- B, C and D -- the city elected  
9 to use subsection C and of the three subsections this is the  
10 only one that restricts the vote to property owners. Strangely  
11 enough subsection B and subsection D both dealing with the  
12 same proposition, both dealing with the same authority, both  
13 pledging revenues and city properties owned by everybody,  
14 two sections allow everybody to vote, one section allows only  
15 property owners.

16 We submit that there is absolutely no justification  
17 for the distinction.

18 Q What is the effect of this new Texas statute?

19 A Sir?

20 Q The subsequently enacted Texas statute?

21 A Well, Act 33 of the Special Session --

22 Q That is the one.

23 A -- we maintain has no ---

24 Q I am sorry, I beg your pardon. Louisiana.

25 A We maintain Act 33 of the Special Session of

1 1968, your Honor, has no bearing whatsoever on this case. As  
2 we have tried to point out to the court in our reply memorandum  
3 the appellees cite a particular paragraph as being a paragraph  
4 ratifying this election.

5 No. 1, it is very strange to us that the paragraph  
6 which appellees claim ratifies this election never uses the  
7 word ratifies, confirms, or in any way assents to it.

8 The next paragraph dealing with previously issued  
9 bonds, which is not the case here, does use these words,  
10 ratify, and confirm. Your Honor may find that statute quoted  
11 at page 17 of the appellees' brief. I did not reprint it as  
12 the appellees had printed the act at page 17 of his brief.

13 We maintain that certainly it was not the intention  
14 of the legislature to ratify this election. Secondly, we  
15 maintain that the legislature cannot ratify action taken under  
16 an unconstitutional State Act in violation of the Fourteenth  
17 Amendment.

18 To do so puts an action of the State Legislature of  
19 Louisiana on an equal footing with the Fourteenth Amendment  
20 to the United States Constitution.

21 Q Why would it be unconstitutional?

22 A Sir?

23 Q How would that statute be unconstitutional? Let  
24 me put it this way. Suppose a State or a municipality  
25 authorized by the State just went ahead and its laws were set

1 up so that the revenue bonds could be issued without any vote  
2 at all. Now, I suppose it is arguable that that would not  
3 offend any provision of the Federal Constitution. Is that  
4 right?

5 A That is correct, your Honor.

6 Q I suppose your argument is that where they do  
7 require a vote that vote has to be across the boards and  
8 without discrimination?

9 A We agree with your Honor that it would not have  
10 been necessary for the State of Louisiana probably to require  
11 an election but under Harper once an election is granted, once  
12 the franchise is granted it must be consistent with the  
13 Fourteenth Amendment.

14 Q So that if the State of Louisiana here had  
15 passed an appropriate statute, presumably, and there had been  
16 no election then your position would be different with respect  
17 to the force of that State statute, would it not?

18 If there had been no election and no election  
19 authorized, no election called for by law?

20 A That is correct, your Honor. I see. Once the  
21 election or franchise is granted, Harper demands that it be  
22 granted in lines consistent with the Fourteenth Amendment.

23 I may point out this to your Honor.

24 Q Well, then if you are correct that would nullify  
25 the election that was held and this statute of your State,

1 Louisiana, says that the governing body may proceed with the  
2 issuance and sale of the bonds whether or not the election is  
3 a valid election.

4         A         But, I point this out to your Honor. If you  
5 will notice the language of the statute itself it says that,  
6 "In the event a property taxpayers' election" -- I am quoting  
7 from page 18, the last paragraph of appellees' brief where he  
8 has set forth the statute -- "In the event a property taxpayers'  
9 election has heretofore been held and promulgated approving  
10 the issuance of bonds ..." -- now even if we were to concede,  
11 which we do not, that the State of Louisiana has the authority  
12 to validate an unconstitutional act, this act in itself is  
13 unconstitutional we maintain in that it recognizes the unfair  
14 advantage given to the property owner.

15         Because this paragraph requires that you have had  
16 an election and obviously you must have had it under this  
17 present statute; the city has chosen subpart C. And if you  
18 had an election it must have passed. So this paragraph recog-  
19 nizes the discrimination in requiring a previous election and  
20 that it had been passed.

21         You could not do it according to this paragraph if  
22 the city of Houma had an election and the bonds had been voted  
23 down, this paragraph would not be applicable.

24         We maintain even to the extent that they recognize  
25 the discrimination of the present statute in this act, this

1 act itself would not be applicable. Even if they had the power  
2 to do it which we do not.

3 Q Well, I suppose your clients are interested in  
4 voting against the bonds, aren't they?

5 A That is correct, sir.

6 Your Honor, please, I would like to save the remaining  
7 part of my time for rebuttal.

8 MR. CHIEF JUSTICE WARREN: You may.

9 Mr. Huppenbauer.

10 ORAL ARGUMENT OF E. E. HUPPENBAUER, JR., ESQ.

11 ON BEHALF OF APPELLEES

12 MR. HUPPENBAUER: Mr. Chief Justice and may it please  
13 the Court.

14 There are really only two issues that this court need  
15 concern itself with in this case. Of course, there is the  
16 constitutional issue and I think more importantly is the effect  
17 of a decision of this court which may invalidate the procedure  
18 under which this bond election was held.

19 You will note in the brief filed by the intervenor,  
20 State of Louisiana, and the Louisiana Municipal Association  
21 that there are fourteen States in the United States which have  
22 similar voting requirement statutes.

23 In every instance, of course, this requirement is  
24 applicable to the general obligation bonds and in most instances  
25 a property taxpayer election is likewise required on a revenue  
issue.



1           Now before I discuss whether or not the relief or the  
2 decision of the court should be prospective or retrospective  
3 certainly there will be serious nationwide consequences to  
4 municipal securities if the retroactivity of this decision  
5 goes back totally or even partially.

6           Nevertheless, there are a few relevant facts which I  
7 think this court should be apprised of. One deals with the  
8 statistics set forth in the factual situation before the court.

9           Appellant contends that there are 11,600 registered  
10 voters, that there are only 4,680 registered property taxpayer  
11 voters. This 4,600 was taken from the assessment rolls in  
12 the registrar's office. Now Louisiana is a community property  
13 State. Property may be assessed and in most instances is  
14 assessed in the name of the husband but the wife is likewise  
15 entitled to vote. She will not show up as a property taxpayer  
16 voter on the assessment roll.

17           Therefore, the argument that there are 6,900 people  
18 eligible to vote who could not vote is substantially diluted  
19 by the spouses of those registered property taxpayers, and  
20 likewise in many instances where property is owned by a parent  
21 now deceased where the estate has not been probated through  
22 the court, the property is still assessed in this name.

23           If they left six or seven children all six or seven  
24 would be entitled to vote. So we submit that the statistics  
25 are not wholly correct. There was no way in which correct

1 whole legitimate statistics could be provided in this case.  
2 Furthermore, this appellant brought this action to enjoin the  
3 election and also the issuance of the bonds.

4 Now, he brought the action some 55 days after the  
5 election was held. The record clearly shows the appellant is  
6 the District Manager of a private utility operating in this  
7 area. He said that he did not vote because he felt like the  
8 election would be defeated.

9 We go back to the same antagonism here of public  
10 versus private power. No other individual has joined this  
11 class action other than this particular plaintiff.

12 Q Does this town already have a municipally owned  
13 and operated gas, electric and water works?

14 A Yes, sir, it has.

15 Q And this bond issue is to expand it?

16 A This is purely for expansion.

17 Q Not to create it?

18 A Not to create it.

19 The provisions of the law require many things. The  
20 vote here is only one administrative incidental factor. No. 1,  
21 the city government must decide whether or not the utility  
22 system needs expansion.

23 No. 2., it must make application to a State board  
24 separately for permission to issue the bonds.

25 No. 3., it then must submit the issue to a voter

1 who has a veto power, we admit. But he also has only one  
2 segment of this deal.

3 If it is approved in these three procedures then the  
4 city government on its own by purely affirmative action must  
5 then issue the bond. Appellant relies heavily on what he  
6 called the 60-day prescriptive period for vesting certain rights  
7 in the person to challenge the election.

8 This statute has a 60-day prescriptive period after the  
9 election. It likewise has a 30-day prescriptive period after  
10 the issuance and sale of bonds. In municipal securities there  
11 is really no vested right in anyone until the bonds are  
12 actually sold and delivered.

13 At any time bonds can be challenged, municipal securities  
14 are not governed by any Federal regulation. Congress saw fit  
15 to exclude it from the SEC control. Therefore, there is a  
16 complex system of checks and balances in the issuance of these  
17 securities.

18 These securities are governed by State Constitution,  
19 State law. Also you will find that a dealer will not buy a  
20 security unless an approving legal opinion by a competent  
21 nationally recognized bonds attorney follows the opinion. All  
22 of these act as checks and balances, constitutes and to limit  
23 the debt amount, they limit interest rates, the vote limits,  
24 expansion, the marketplace actually limits the sale and  
25 delivery of securities.

1 In this instance if these bonds are to be issued they  
2 certainly cannot be issued indiscriminately. The city already  
3 has the utility system. It has millions of bonds outstanding  
4 against this system.

5 Unless the system can prove itself to pay additional bonds  
6 and comply with many covenants and restrictions imposed upon  
7 the city on bonds already issued then there cannot be a second  
8 bond issue. There are all these facets concerned. We feel  
9 that the election here is purely an administrative function.

10 Q Do you consider the election outside the Fourteenth  
11 Amendment?

12 A We consider it outside the Fourteenth Amendment.  
13 We believe that the analogy of this ---

14 Q You mean the Fourteenth Amendment doesn't apply to  
15 this election? Why?

16 A We feel like in view of the decision in Harper which  
17 states only invidious discrimination or arbitrary discrimi-  
18 nation is repugnant to the Federal Constitution, which the  
19 States are still permitted to classify. It has not disallowed  
20 States from continuing to classify in voting.

21 In Avery versus Midland County this court ---

22 Q Well what you say is it doesn't violate the  
23 Fourteenth Amendment?

24 A It does not violate the equal protection clause.

25 Q Well, my question was did you agree that the

1 Fourteenth Amendment had to be applied to it?

2 A It could be applied, yes, your Honor.

3 Q It had to be.

4 A It had to be but then we feel ---

5 Q You have to comply with the Fourteenth Amendment.

6 Do you agree with that?

7 A Yes, we have to comply with the Fourteenth Amendment.

8 Q Do you think you comply with the Fourteenth Amendment  
9 when you say that one of the requirements for voting is owing  
10 a property?

11 A We feel in this instance it is because we are not  
12 voting on an essential governmental purpose. We are not  
13 electing officials ---

14 Q Well, if it is not an essential governmental purpose,  
15 how can you get it at all? Are you in private business down  
16 there?

17 A This is a private business of the city. Actually it  
18 is a quasi-private business.

19 Q A private business of the city?

20 A Correct, sir.

21 Q It is not private?

22 A No, it is public. But it is quasi ---

23 Q If it is public, it is under the Fourteenth Amendment.

24 A Correct, sir.

25 Q And you can't put up a property qualification for



1 voting. Is that what Harper says?

2 A Harper said you cannot discriminate invidiously you  
3 can't discriminate arbitrarily.

4 Q The only requirement in Harper was a couple of  
5 dollars, a poll tax, right?

6 A Correct, but that was a dollar.

7 Q That is all it was. You don't have any property at  
8 Houma that sells for \$2, do you?

9 A I am not aware of that, your Honor.

10 Q You should not. So it is a heavier requirement than  
11 it was in Harper.

12 A But the tax here does not go to the qualification of  
13 voting. The tax here is a revenue-producing tax that goes  
14 to the benefit of the city. We feel that the interest of the  
15 voter should be distinguished from his affluence and his  
16 competence.

17 In Avery versus Midland this court reaffirmed its dis-  
18 tinction in the equal one-man, one-vote rule and still upheld  
19 the doctrine of Sailors versus the Board of Education, as  
20 against the Reynolds case.

21 There they distinguished between administrative functions  
22 versus legislative and actual governmental functions. This  
23 is purely a quasi -- this is a propriety interest of the city  
24 in an operation of a utility system which has nothing to do  
25 with general Government.

1 Q Which could possibly affect this taxpayers' property?

2 A Very definitely.

3 Q And the one that didn't own real property, his money  
4 is in trouble, too, isn't it?

5 A Not necessarily.

6 Q But it could be?

7 A To the extent that there may be surplus derived from  
8 the operation of the utility, it could possibly be.

9 Q So he has no right to vote on what might happen to  
10 his money?

11 A That is correct, in this instance.

12 Q And you don't think that is discrimination?

13 A No, because we feel this is not within the purview  
14 of Harper.

15 Q Well, Harper dealt with money, didn't it?

16 A Harper meant money but the money ---

17 Q And what is involved here?

18 A Sir?

19 Q What is involved here, money?

20 A Here is only a veto power of a segment of the  
21 community which we feel has a very pecuniary interest in the  
22 utility system rather than the general public itself.

23 Q Well, who pays for the utilities in Houma?

24 A All citizens pay.

25 Q Who pays, the tenant or the landlord?

1       A     The tenant or the landlord depending on the lease  
2 arrangement.

3       Q     I say who does at Houma? Is it different? Does the  
4 landlord pay for it down there?

5       A     In most instances I would be sure that the tenant  
6 must pay for it but the rates were fixed by the government  
7 itself, by the elected officials. The bond issue in most  
8 instances will not affect the rates. Therefore, the man  
9 without property is not concerned about rates in the bond  
10 election.

11       If he is concerned about the rates then he can vote for a  
12 new official at the next election to justify the rates which  
13 may be imposed upon the community. We feel the Harper case  
14 is not wholly solid in its declaration that they cannot be  
15 classification and we think that the classification can be  
16 made provided it is not arbitrarily and invidiously discrimi-  
17 natory.

18       We feel like the election here was purely an administrative  
19 function coupled with the other approvals necessary.

20       Q     Might there not be a temptation on the part of the  
21 property owners to have a higher rate for this utility so  
22 that it would make a profit and the general fund would benefit  
23 from it and thus reduce their taxes and in that manner cast a  
24 burden on the people who were not property owners?

25       A     That certainly would probably be one of their desires

1 but still be elected officials.

2 Q Isn't that the reason that provision is in the Act?

3 A I don't believe, your Honor. The provision is here  
4 what I am sure the legislature tried to do is maintain a  
5 consistency on voting on bond issues. I think we all must  
6 agree that the taxpayer certainly has the paramount interest  
7 in the general obligation bond.

8 Similarly we argue the interest here is more predominant  
9 in the taxpayer because he has to have utility to serve his  
10 property to make it valuable or salable.

11 Q Everybody has to pay for it, though?

12 A Correct. Everybody has to pay for it, but the rates  
13 fixed are by the elected officials, not by the taxpayer himself.  
14 The rates are fixed by elected officials. Now politically  
15 elected officials are very cognizant of rates. If they fix  
16 rates too high, discriminating against one class of citizens  
17 they are certainly susceptible of being thrown out of office.

18 Q But they are very cognizant of the tax rates, too.

19 A They are very cognizant of tax rate.

20 Q Who knows what temptation there will be to keep a  
21 tax rate down or keep the utility rates down.

22 A But we can extend this doctrine to a point where  
23 why not have a corporation permissible to vote, why not have  
24 the nonresident taxpayer who may live in another State or  
25 another county who may own substantial land interest. He is

1 not entitled to vote. There are all kinds of stages of classi-  
2 fication and in this instance the State has seen fit to maintain  
3 consistent classification for the general obligation bond and  
4 the revenue bond.

5 Because we feel there is a peculiar interest invested  
6 in the property owner here rather than the entire community.

7 Q What is a peculiar interest of a property owner  
8 over and above that of a tenant so far as rates are concerned?

9 A We are not really concerned with rates here,  
10 your Honor. We are concerned with the service to a piece of  
11 land for water or gas or electricity. Now, rates, we realize,  
12 are indirectly affected by bonds but the rates are not estab-  
13 lished by the voters. They are established by the elected  
14 officials.

15 The rates are separate and apart from the expansion  
16 or the improvement of a facility to landed areas within the  
17 community. I realize there is some tie-in, but it is not a  
18 direct effect. There is some distinction.

19 Q I would like to get back to something Mr. Justice  
20 Stewart asked you.

21 Reading the record here I gather that there is  
22 Louisiana Power and Light Company, a privately owned utility  
23 operated in the city. Is that right?

24 A It operates -- there is a segment of that  
25 utility company very definitely operating in the city.



1 Q Does the city have an electric system of its  
2 own?

3 A The city has an electric system. I would say  
4 it comprises about 80 to 90 percent of the city.

5 Q So that part of the purpose of this bond issue  
6 was to acquire the remaining 10 or 20 percent of the facilities  
7 served in the city. Is that correct?

8 A Correct.

9 But it also was intended to complete a project that  
10 was voted and approved in 1965 and this was the effect of  
11 prospective or retrospective effect become very important.

12 In this instance the city had a bond issue in '65.  
13 They have sold two segments of that issue. There is about \$2  
14 million left out of that issue which is not involved in this  
15 instance. They have committed themselves to long-term  
16 contracts with Westinghouse, General Electric to buy generating  
17 capacity.

18 This money is needed to house and to extend the  
19 lines from that generating unit. It is all tied into a long  
20 range program.

21 Q Was there a contest with Louisiana Power and  
22 Light participate in the election hearing that took place before  
23 the election was held?

24 A The Louisiana Power and Light Company took an  
25 active role in trying to defeat the election by public

1 relations, very definitely and the litigant here is the  
2 District Manager. There is also a separate suit filed in the  
3 District Court in the State by the right-of-way manager of  
4 the power company.

5 Q I do see the appellant here is a qualified  
6 voter?

7 A He is definitely a qualified voter, yes.

8 The issue of prospective or retrospective effect here  
9 I think is very important, not only to Louisiana but to the  
10 other thirteen States which have similar types of voting  
11 procedures.

12 This court has in the reapportionment case used the  
13 prospective effect where they found inequities to exist where  
14 there would be dire circumstances which would arise to vested  
15 interests.

16 Now there are millions and billions of dollars of  
17 bonds outstanding by not only Louisiana and the other States  
18 but many municipalities which have either voted and sold all  
19 the bonds, bonds have been delivered, there are many instances  
20 where bonds have been voted but the complete issue has not yet  
21 been delivered.

22 If you make your decision retrospectively even to the  
23 date of say the Houma election, you are going to cut off many  
24 bonds that have been previously authorized but not yet issued.

25 Q May I ask you, does the act state when it shall

1 become in effect?

2 A Act 33.

3 Q The legislative act?

4 A Act 33 which was enacted by the Louisiana  
5 Legislature became effective in January of this year.

6 Q What effect would that have on prospective  
7 or retrospective? Is this a State question or a Federal  
8 question?

9 A I think this act was purely a State question.  
10 There is no constitutional requirement in Louisiana that an  
11 election be held at all. There is no Federal constitution  
12 requirement here that an election be held.

13 If the State had no election procedure it certainly  
14 I believe could issue the bonds by purely the Governmental  
15 agency itself.

16 The Legislature saw fit to protect the vested  
17 interests of these municipalities that have extended contracts,  
18 that have bonds voted but not issued to allow them to continue  
19 to do so.

20 It so extends I believe to this particular case  
21 because the city of Houma did hold the election, it was properly  
22 promulgated under the authority then existing in the State  
23 of Louisiana.

24 Q Under the law, when was that to go into effect?

25 A This act went into effect in January. I feel

1 that it definite -- that it had a definite effect. It was  
2 certainly meant to include this particular case. This bond  
3 election was held. The Legislature said in effect if you had  
4 an election, no matter what procedure you had, you do not have  
5 to have another election. You can go ahead and issue those  
6 bonds.

7 Now here after you have two procedures to follow, in  
8 the anticipation perhaps that this court may nullify the  
9 procedures already they then adopt a double system now. The  
10 municipality can continue under the same system or you can go  
11 to a general election where all registered voters are eligible  
12 to vote.

13 This, however, acts prospectively. The Act, I think,  
14 attempted to cure and permit the issuance of all bonds which  
15 have been previously voted. This same effect, I think a  
16 decision by this Court, if it were retroactive would affect  
17 all the other States which had similar statutory requirements  
18 or constitutional requirements.

19 In many instances it would leave projects which are  
20 partially completed from financing, or projects which have been  
21 approved by the voter for which commitments have been made  
22 where by the issuing authority of the municipality or the  
23 political subdivision could not then find the financing if this  
24 decision is retrospective in any effect.

25 We believe that to avoid a calamity in the municipal

1 market in this country that the fairest prospective relief  
2 that could be afforded in this case should the court find this  
3 procedure is unconstitutional is to apply it solely to  
4 elections to be called hereafter, which would allow bonds to  
5 be issued under elections previously conducted where many  
6 commitments have been made by political subdivisions.

7 Q I suppose that if one were compelled to defend  
8 what was done here one might argue that the class that has an  
9 interest in whether revenue bonds should be issued is a class  
10 of property owners because the purpose of the issuance of the  
11 revenue bonds is to provide utilities systems that on a long  
12 term basis will affect the value of the property and the  
13 property owners.

14 That if the tenants, the users of the utilities, that  
15 the interest of the users of the utilities is in the rates  
16 and their interest in the question of the issuance of the  
17 bonds is a secondary one that is too remote to justify vindi-  
18 cation in the courts as a matter of Federal constitutional  
19 law.

20 A That, I think, is our position wrapped up very  
21 beautifully, that rates are distinct from the bond issue here.  
22 The expansion or development affects more directly the land  
23 owner if the user himself as well as the property owner who  
24 is also a user is dissatisfied with his rate he then has a  
25 right to elect new city officials who themselves alone have a



1 right to fix these rates.

2 Q Well, I am sure you don't accept what I said  
3 just now as an indication that I am persuading myself.

4 A I agree, sir. No, your Honor. I think it is a  
5 good wrap-up of the argument that we feel here. There is a  
6 justification for a classification in this particular instance.

7 Because this is not an essential Government purpose;  
8 this is purely one which involves an administrative function  
9 of the Government, a quasi-corporation operation.

10 Q Excuse me. Would you be better off if the money  
11 involved was restricted to the tax on real property?

12 A I think the greater interest definitely in the  
13 general obligation bond is predominantly in the taxpayer. But  
14 we feel in view of the statement Justice Fortas just indicated,  
15 there is more of an interest in the land owner to see that  
16 property is developed with utility services extended to them.

17 Q But I understood this is a bond issue which  
18 pledges the money of all of the taxpayers.

19 A This bond issue only pledges the revenue derived  
20 from the operation of the utility system.

21 Q And?

22 A That is all.

23 Q And?

24 A But the surplus which may be derived --

25 Q That is what I was talking about.

1           A     -- will flow into the general fund if there is  
2 a surplus.

3           Q     That is right. You can't separate it.

4           A     Oh, I think you can, because the city -- there  
5 are many types of reserve payments, reserve funds which must  
6 be established in issuing bonds.

7           Q     Did I understand you that where a municipality  
8 is issuing bonds of all different kinds that it requires a  
9 vote of the citizens, you can on one bond issue restrict it to  
10 property owners, on the other one restrict it to nonproperty  
11 owners and the other restrict it to nonresidents. You don't  
12 go that far, do you?

13          A     No, I don't think you can go that far. I think  
14 you definitely must say that where the bond is payable from  
15 ad valorem taxation on property that certainly the vested or  
16 the paramount interest is in that property owner.

17          Q     To the exclusion of all others?

18          A     To the exclusion of all others, correct.

19                We are in that gray area.

20          Q     Do you have any cases to back you up on that  
21 point?

22          A     No cases whatsoever.

23          Q     You do have Harper?

24          A     We have Harper which says that you can still  
25 classify but not arbitrarily or discriminatorily.

1 Q And Harper says whenever you set up an election  
2 you have to abide by the Fourteenth Amendment, in any election.

3 A But, Justice Marshall, the Harper case was  
4 really concerned with the election of political officials.  
5 Every case relied upon in Harper dealt with that, not an  
6 administrative function.

7 Q Very often you look at the last paragraph of an  
8 opinion and you will find just what I said in that last  
9 paragraph.

10 A I realize the language is quite strong, but you  
11 have the Sailors case involving the one-man, one-vote rule,  
12 which has made a distinction.

13 Q Well, then maybe we had better clear it up again  
14 here.

15 A Perhaps so, but this court in Avery just last  
16 term recognized again the distinction of voting requirements on  
17 administrative purposes rather than purely total governmental  
18 function.

19 Notwithstanding the decision of the court to all  
20 bond issues or whether it be retrospective or prospective,  
21 we feel that since there is no constitutional requirement,  
22 either State or Federal, that the Louisiana Legislature had a  
23 right and did in fact validate the issuance of these bonds at  
24 issue in this instance.

25 We submit, therefore, that the decision of the lower

1 court should be upheld.

2 MR. CHIEF JUSTICE WARREN: Mr. Watkins.

3 REBUTTAL ORAL ARGUMENT OF KENNETH WATKINS, ESQ.

4 ON BEHALF OF APPELLANT

5 MR. WATKINS: May it please the court.

6 There are only a few comments I think I would like to  
7 make with respect to Mr. Huppenbauer's argument.

8 No. 1, I think it is important to point out that  
9 these bonds we are talking about in this case are not general  
10 obligation bonds, contrary to the statistics Mr. Huppenbauer  
11 referred to in the amicus brief.

12 Although it didn't reflect it here, the statistics in  
13 the amicus brief are somewhat misleading in that the real  
14 gem of this is that no general obligation bonds are here, no  
15 tax money can be used, and that the statistics shown in the  
16 amicus brief fail to clearly set forth the number of States  
17 where the general obligation bonds are not in effect.

18 We believe there are only three States in the Union  
19 so far as we can ascertain from our research: Louisiana,  
20 Texas and Idaho that have any requirement even similar to this  
21 with a nongeneral obligation bond in question.

22 With regard to Mr. Huppenbauer's argument on the  
23 spector of confusion, gentlemen, simply does not exist. The  
24 State law can be made applicable as this court did in Linkletter.  
25 Whenever the State law determines finality, to an issue, and

1 at the time under State law has passed to challenge that issue  
2 this is an easy breakoff point should the court decide to use  
3 it, so to speak.

4 In this case the questions have not become final,  
5 vested rights have not come into play.

6 Q Can you tell us whether every State has a  
7 finality period for contesting a bond issue? That finality  
8 period, that is measurable in months rather than years?

9 A No, sir, I can't off-hand tell you that, your  
10 Honor. I would be glad to have that matter checked and submit  
11 it to the court if the court would feel that it would want it.  
12 But I am not prepared to give the court that statement of fact  
13 as to the number of States that require months instead of years.

14 I would certainly assume, however, as Mr. Huppenbauer  
15 has actually argued, that every State has some period that at  
16 some point you have to have a finality for somebody to buy the  
17 bonds.

18 Q I am sure of that, but in terms of years a  
19 decision such as you are requesting might very well be extremely  
20 disruptive and a great deal of money.

21 A I will only suggest that the question of years  
22 is in all probability not in play here, your Honor, as who  
23 would want to wait years before they could sell a bond? And  
24 I am sure nobody would want to buy a bond when the matter had  
25 not become final as Mr. Huppenbauer had suggested.



1           They have to have an opinion from a competent bond  
2 attorney and these competent bond attorneys must certainly  
3 certify that the time for challenge has passed. I am sure  
4 no issuing authority would want to wait several years before  
5 they issued bonds.

6           Q     This is a pretty small town, isn't it?

7           A     The town is about 35,000 people now, your Honor.

8           Q     And Louisiana Power and Light has about what,  
9 10 to 20 percent of the electrical system?

10          A     I would estimate that, your Honor.

11          Q     There must not be much revenue here at stake.

12          A     Well, the question is this, your Honor, if we  
13 are going into that phase of it, not necessarily a question of  
14 revenue at stake but as we discussed earlier, this is a  
15 question of possibly a using revenue in lieu of tax and not  
16 giving the majority of people the right to vote on it.

17          Q     Oh, I am not talking about that, I am talking  
18 about what is the real interest here. The Louisiana Power and  
19 Light.

20          A     Well, the real interest of that company, your  
21 Honor, I couldn't say. Mr. Cipriano does work for them but  
22 we do have 6,000 other plaintiffs. This is a class action.

23                (Whereupon, at 11:23 a.m. the oral argument in the  
24 above-entitled matter was concluded.)