

In the

# Supreme Court of the United States

E. C. CHAPPELLE, JR.,

Appellant,

v.

THE GREATER BATON ROUGE AIRPORT  
DISTRICT, ET AL.,

Appellees.)

N 76-352

Washington, D.C.  
April 25, 1977

Pages 1 thru 36

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E.C. CHAPPELLE, JR., :  
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Appellant :  
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v. : No. 76-352  
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THE GREATER BATON ROUGE AIRPORT :  
DISTRICT, ET AL., :  
:  
Appellees. :  
:  
-----X

Washington, D. C.

Monday, April 25, 1977

The above-entitled matter came on for argument at  
2:14 o'clock, p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States  
WILLIAM J. BRENNAN, JR., Associate Justice  
POTTER STEWART, Associate Justice  
BYRON R. WHITE, Associate Justice  
THURGOOD MARSHALL, Associate Justice  
HARRY A. BLACKMUN, Associate Justice  
LEWIS F. POWELL, JR., Associate Justice  
WILLIAM H. REHNQUIST, Associate Justice  
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

HERSCHEL C. ADCOCK, ESQ., 821 Main Street, Post  
Office Drawer 3037, Baton Rouge, LA 70821;  
on behalf of the Appellant.

JOSEPH F. KEOGH, ESQ., Parish Attorney, East Baton  
Rouge Parish, 202 Municipal Building, Baton Rouge,  
Louisiana 70801; on behalf of the Appellees.

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in 76-352, Chappelle against the Greater Baton Rouge Airport District.

Mr. Adcock, I think you may proceed when you're ready.

ORAL ARGUMENT OF HERSCHEL C. ADCOCK, ESQ.,

ON BEHALF OF THE APPELLANT.

MR. ADCOCK: Mr. Chief Justice, may it please the Court:

My name is Herschel Adcock and I represent the appellate in this matter, E.C. Chappelle, Jr.

This is a case that is before the Court on a constitutional issue, in that Louisiana statute requires the ownership of property assessed with any parish in order for a person to be a member of the airport commission.

For a period of five years, prior to the time the appellant resigned, he was the executive director and secretary of the greater Baton Rouge Airport District. Mr. Chappelle was the airport, for all intents and purposes. He ran the entire show, with the airport commission giving him technical advice.

Mr. Chappelle then resigned his position as the director of the airport, and was appointed as a member of the airport commission.



Shortly thereafter, prior to the time that his appointment ran, the East Baton Rouge Parish clerk summarily dismissed Mr. Chappelle from the Commission after receiving a legal opinion that since Mr. Chappelle did not own property assessed in East Baton Rouge Parish, that he was not qualified to serve as a commissioner on the airport.

Based upon this notion, Mr. Chappelle then filed suit in district court in Baton Rouge, alleging, number one, that he did meet the qualifications, that he did own property that had been assessed in East Baton Rouge Parish; and it was proven in Court that he did own property on which he had actually paid taxes.

But the court held that since this property was not listed on the assessment rolls, that he had not technically met the requirements to be a member of the airport commission.

Mr. Chappelle likewise -- in the alternative if the court determined that he did not meet these qualifications, raised the issue that the Act which required the ownership of property was unconstitutional, in violation of the equal protection and due process clauses of the United States Constitution.

On March 4, 1975, Mr. Chappelle was formally denied his seat on the airport commission.

On July 23, 1975, the 19th Judicial District Court

ruled in favor of the City of Baton Rouge, stating that indeed he did not have the right to sit on the airport commission because he did not have property assessed in East Baton Rouge Parish.

Mr. Chappelle then went to the next procedure. He asked the Court of Appeal, the 1st Circuit Court of Appeal sitting in Baton Rouge, to review the decision. Once again, he urged the equal protection and due process clauses of the United States constitution, and once again, the Court of Appeals aligned itself with the District Court, stating that he owned no assessed property, and was therefore not qualified to sit as a member of the airport commission.

Mr. Chappelle had no direct right of appeal to the Louisiana State Supreme Court, but asked the Supreme Court to review this decision by the Court of Appeals. The Supreme Court, in a memorandum decision, denied the writ, with one of the justices stating that the writ should be granted. And he decided the case on which we principally relied, the Turner v. Fouche.

We have before the Court, we believe, three questions. The first one is the case of Turner v. Fouche: does it mandate that this statute in Louisiana that requires the ownership of assessed property, does it mandate that this statute be struck in violation of the equal protection clause of the Fourteenth Amendment? Secondly, the Court should determine whether or not

this act is in violation of the due process clause, in that the requirement of the ownership of assessed property has no reasonable basis as to the qualifications of a person to sit on the airport commission.

QUESTION: What sort of authority, counsel, does the Greater Baton Rouge Airport District exercise? Does it exercise general governmental authority? Or is it kind of a specialized district?

MR. ADCOCK: It is a specialized commission that deals with the day-to-day affairs of the airport itself.

QUESTION: Well, why wouldn't that be governed by those Salyer and Tulare cases which we handed down about three or four years ago which I notice neither party cites in their briefs, where we said, in the case of a special improvement district, the one-man, one-vote rule and the property requirements did not apply?

MR. ADCOCK: This body is a public body that sits and actually approves leases. And deals with the day to day affairs of the airport. It is a public-appointive body; they serve for a given term.

QUESTION: Well, these were in that sense public bodies, but I think they were described as kind of special use districts rather than districts having general governmental powers.

MR. ADCOCK: Yes, sir. I'm not familiar with the

cases, your Honor.

The third question we think this Court should consider is whether or not a citizen has the constitutional right or fundamental right to hold an appointive position; that is, whether he should have the right to be considered to the appointment of a public body, and whether or not the ownership of property should come into the picture at all.

It is our position that if this Court upholds the Louisiana statute that permits the state to require the ownership of assessed property, this will just open the door for additional classifications, and will completely undermine the protection that citizens have to be considered in appointments to public offices.

QUESTION: Well, we have upheld, just in the past couple years, residency requirements for running for office of five and ten years in length. How would you distinguish those? if every citizen has a right to be considered for public office?

MR. ADCOCK: Okay. Residency requirements can be argued as having a reasonable basis. If someone -- if you do not have a residency requirement, it would be too difficult for the voting officials to keep up with citizens. You could have someone who would move to one place and vote, and to different areas and vote.

QUESTION: Well, I'm talking about a New Hampshire



law which we upheld two or three years ago that as I recall required a fifteen year residency requirement before you could run for governor. Now, that certainly isn't based -- that isn't the kind of time period that you're talking about; eliminating fraudulent voting. I mean that's just a long term attachment to the State that was required, and we upheld it.

MR. ADCOCK: Okay, to live at a place for a certain period of time, I believe, is a rational basis to determine whether someone is qualified to sit in a public position. But to require that that person owns property assessed in a parish in order to be considered for a public office is in violation of the equal protection laws of the country.

QUESTION: But doesn't it have the same motivation, or at least something in common with the residency requirement, that is, an attachment to a more-or-less permanent relationship to the community?

MR. ADCOCK: I don't believe that the ownership of property can be considered as indicative of someone having an attachment to a particular area. Because there are --

QUESTION: Well, the question is whether it's rational for the State of Louisiana to think so; whether that's an adequate basis.

MR. ADCOCK: Yes. Well, the State of Louisiana apparently in drafting this I thought that it did have some

rational basis. It is our position that it does not, that the ownership of property does not make one better qualified to sit as an airport commissioner, especially in the light of the facts that we have before the court today. Here we have an expert in the field of aviation, a man who had run the airport for five years; who had resided in the area for a great length of time. Yet he was denied a seat on the airport commission because he did not --

QUESTION: Well, you're arguing his special qualifications. Statutes can't be made, can they, to reach every situation when there's a line-drawing process?

MR. ADCOCK: No, sir. I was giving that as an example of how this statute does discriminate against persons who are highly qualified. Here we have a public body making decisions for the entire public of the parish of East Baton Rouge and the greater Baton Rouge area. These are citizens throughout the parish, or this area of the state, who have great need for an adequate airport. Yet--

QUESTION: Does this requirement apply to any other public office in Louisiana?

MR. ADCOCK: Not to my knowledge, sir. Not to my knowledge.

QUESTION: Is there any legislative history why they attached to holding this office?

MR. ADCOCK: No one seems to be able to tell me. I

have examined the records when this bill was presented to the legislature in 1969, and there is nothing in there stating why they had the requirement of the ownership of property.

QUESTION: Well, is he eligible to be considered now?

MR. ADCOCK: According to the opinion of the lower court, and of the parish attorney, he would not be, because he -- during the time that he was dismissed, and the time this case actually came to trial, in an attempt to avoid the payment of tremendous fees and costs to Mr. Chappelle, he did go and buy property. The court ruled that that was a moot question; that the statute required the ownership of property at the time he was appointed. And because he did not own the property --

QUESTION: Well, suppose he had to step aside now; there'd be a vacancy. Could he be considered now?

MR. ADCOCK: If this statute remains on the books, he could not, because he does not own property. He has since dispossessed himself of this real estate.

QUESTION: Well, suppose he hadn't. Could he then be considered?

MR. ADCOCK: Yes, sir.

QUESTION: Why does he want the job? Is it a compensatory job? Is there --

MR. ADCOCK: It is not a compensatory job.

QUESTION: I ask selfishly because I, at one time, served on an airport board. And I don't quite understand what all the fuss is about.

MR. ADCOCK: I'll have to go outside the record, to a certain extent, although it is a part of the state records. Mr. Chappelle has a long record of being connected with aviation. He is a retired Air Force Colonel. He has served in numerous capacities with airports in the past. There was a political struggle between the mayor and the -- another politician in the area, and he choose the wrong friend, apparently. He wanted to remain in the field of aviation, so he would have the opportunity to attend seminars that would keep him abreast of the changes in the field of aviation. That was his principal reason for wanting --

We believe that the language that we have cited in the brief on page 7 in the Turner v. Fouche is one that should control this situation. And I will quote a portion of it: "...the appellants and the members of their class do have a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications." We submit that this is an invidiously discriminatory qualification; that is, the qualification that he must meet of owning property assessed.

And bear in mind that the lower court did hold that Mr. Chappelle owned the property. They did hold that property



as determined in Louisiana means either real or personal property. They held that he owned property located in East Baton Rouge Parish. We're not just talking about land; we're talking about property. But the mere fact that it was not listed on the assessment rolls was the issue that the Court of Appeals used in which to uphold the lower court.

We further submit that there is no rational basis for the ownership of property in that there is no -- this does not make a person better qualified to be an airport commissioner, simply to have his property listed on the assessment rolls. As we pointed out in our brief --

QUESTION: Let me ask you, Mr. Adcock, what governmental bodies, under Louisiana law, may impose taxes to fund airport bonds, if you have such things? Any of these organizations, the parish council, the city council, the airport authority?

MR. ADCOCK: Yes, sir; the airport authority, the city council, can impose taxes. And of course, the state legislatures.

QUESTION: Does the airport authority require the consent of any other governmental body before it may assess a tax?

MR. ADCOCK: I don't believe -- Mr. Keogh, being the parish attorney, can better answer that question, Mr. Justice.

292 QUESTION: Mr. Adcock, what do you do with the language in Snowden v. Hughes that -- it said back in 1943 that more than 40 years/this Court determined that an unlawful denial by state action of a right to state political office is not a denial of a right of property, or of liberty?

MR. ADCOCK: We believe that the line of cases, Turner v. Fouche, and the other cases cited --

QUESTION: It cites this case -- with approval.

MR. ADCOCK: With approval.

QUESTION: Yes.

MR. ADCOCK: We believe that it's -- that the Turner v. Fouche -- what we're centering on is the issue of whether or not there's compelling state interest for requiring this classification. Now, a person does not have a fundamental right to be on the airport commission. But he has the fundamental right to be considered for this position. And he cannot be denied this right if such denial runs afoul with the equal protection and due process clauses of the United States constitution. This, we submit, has happened in this case.

First of all, the Turner v. Fouche case --

QUESTION: Well, if he doesn't have a property right, what does he have?

MR. ADCOCK: He has -- it's a fundamental right arising from the constitution not to be discriminated in

consideration for appointment to this public body. If there was a compelling state interest for requiring this classification, yes, perhaps.

QUESTION: Well, in the Snowden case the man was denied a political office because he was a Negro. This Court said, that wasn't enough.

MR. ADCOCK: Well, we believe this Court has overruled that finding in the Snowden case in many areas, and we further submit --

QUESTION: You're not going to put your finger on them right now?

MR. ADCOCK: No, sir. We submit that this statute could have just as well said, he must be a white citizen owning property assessed. It would have been a little easier. I don't believe our State court would have permitted that statute to stand when it was attacked on those -- on the constitutional grounds.

QUESTION: Well, the statute does say that when you go on the tax roll, you have to go on according to your race.

MR. ADCOCK: I'm not familiar with that, if --

QUESTION: That isn't what Louisiana says?

MR. ADCOCK: I'm not going to say it doesn't, but if it does, I, being a Louisiana citizen, I was not aware of it, and I -- it's hard for me to accept that.

Finally, and as I had said at the outset, we do not

believe that there is a compelling State interest for the upholding of this statute, which prohibits any person from being considered for such appointment. Consideration is the key; not the right to be on that commission, but consideration for. Because we have here a person that I think all parties would admit is qualified to serve on the airport commission. Had he not been, he certainly would not have been appointed. But we have a person who was stricken by the parish clerk simply because he did not own property assessed in East Baton Rouge Parish. We respectfully request this Court to strike that portion of Louisiana Act 151 of 1969 as being unconstitutional.

Thank you.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Adcock.

Mr. Keogh.

ORAL ARGUMENT OF JOSEPH F. KEOGH, ESQ.,

ON BEHALF OF THE APPELLEES.

MR. KEOGH: Mr. Chief Justice, and may it please the Court:

My name is Joe Keogh, and I represent the appellees in this matter. I spoke to the clerk earlier, and if I might take about two seconds of the Court's time, I wanted to verbally amend a typographical error on page 7 of appellees' brief for the phrase as it appears is not the way that it was intended to be printed. The phrase should read --



QUESTION: Where can we find it, first?

MR. KEOGH: In the second paragraph of page 7.

QUESTION: Yes.

MR. KEOGH: And it's implicit to my defense before the Court, because we do not quarrel with the Turner case. And the way it reads, it reads, the Turner rule -- it reads -- and result in a further unwarranted intrusion on a legislative body. It should read, and further -- and further result in an unwarranted intrusion. Because we do not feel like the Turner case was an unwarranted intrusion on the legislative authority of the State of Georgia. In fact, we embrace the Turner v. Fouche case, and we embrace all of the decisions that stem from that line of jurisprudence, and yet submit to this honorable Court, may it please the Court, that as has been pointed out by some of the questions already, the case that we have before us does not fall within the ambit of equal protection as set forth in Turner v. Fouche or [pronouncing] Fouche. The essential part of the case that the appellants I truthfully believe have misstated, unintentionally, of course, is that this is a fundamental right. And all of our research indicates that there are a lot of fundamental rights that this court has set forth: marriage, procreation, vote, equal voting power, interstate travel, First Amendment rights. All of these are set forth at page 8 of appellees' brief. Access to the ballot as a candidate;

397 it's arguable whether that has ever been clearly enunciated as a fundamental right or not. But there are several cases interpreting it, Bullock v. Carter, Lubin v. Panish . Access to divorce courts -- again arguable as to whether that is a fundamental right. Criminal courts counsel and transcript, of course. Privacy of some types.

But we submit, Mr. Chief Justice and Members of the Court, that this is not a fundamental right that Mr. Chappelle had to serve on an appointed advisory body. The question was asked, I think by Mr. Justice Marshall, perhaps, as to whether or not this Board of Commissioners had any final authorities. The question was referred to me, since I've been advising these people for nine years. They do not have any final authority. The Act, which we reproduced in its entirety in our brief, sets forth the fact that this body's authority is essentially of a recommendation level. They recommend to the parish counsel, which acts as the airport district.

QUESTION: Well, must it act affirmatively?

MR. KEOGH: Yes, sir.

QUESTION: Suppose it doesn't act at all?

MR. KEOGH: Yes, sir.

QUESTION: What happens then to the --

MR. KEOGH: If it doesn't act affirmatively -- it has a meeting every month. The Act sets forth that it must

have at least one meeting a month. And it transacts -- as counsel for appellant said -- it transacts day-to-day business of the Director that he brings before them: pass resolutions and so forth.

Now, the way the Act sets up this Commission, it's a two-tiered process. And I'm not intentionally borrowing on Mr. Justice Marshall's language, two-tier process, in the Mergier case, or [pronouncing] Mergier case when I use that concept. But it is a two-tier process.

This Commission after it acts the counsel, which is a dual sitting body, it sits as a parish counsel, which is a single member districted body that governs the entire parish and the city, because we have a combined form of government in Baton Rouge, it recesses as the parish counsel and then reconstitutes itself with the same membership and so forth as the governing authority of the airport district. So all of the decisions that are made by resolution -- this is all found in the Act -- made by resolution of the Commissioners is either approved, rescinded, or disapproved -- or suspended, rather -- rescinded, approved or suspended by action of the parish counsel sitting as the airport district.

And so, consequently, we view it as definitely not the type of Board of Commissioners that one is entitled to serve on as a matter of fundamental right. Therefore --

QUESTION: You've been representing which, the

commission, or --

MR. KEOGH: The parish and the city, Mr. Justice.

QUESTION: You've been representing them for nine years?

MR. KEOGH: Yes, sir.

QUESTION: Then were you doing that when this Act 151 was --

MR. KEOGH: I must plead guilty; I certainly was, Mr. Justice.

QUESTION: Well, can you tell us the reason for this requirement?

MR. KEOGH: Well, yes, sir, I can. I think the legislature adopted these as minimal objective criteria as opposed to subjective criteria which one finds in cases like Turner v. Fouche. And one, to establish some nexus with the parish.

QUESTION: Well, one had to be an elector as well as --

MR. KEOGH: Correct, your honor.

QUESTION: -- an owner of assessed property.

MR. KEOGH: Right. Two qualifications only: there had to be a qualified elector, and --

QUESTION: Which he was.

MR. KEOGH: Pardon?

QUESTION: Which he was, was he not?



MR. KEOGH: Which he was, yes, sir. No question.

QUESTION: He had to be a resident, I gather, to be a qualified elector?

MR. KEOGH: Yes, sir.

QUESTION: Why wasn't that enough?

MR. KEOGH: Well, the legislature in its wisdom may not have -- and I submit to you in all candor -- may not have been as wise as we today, in 1969, about trying to set a requirement to fulfill the State purpose of connexity or nexus to the parish to show an interest in the community such that one could not go out and appoint a transient at the Greyhound Bus Station, for example.

QUESTION: Yes, but I take it the mayor -- are the mayor and the parish counsel members required also to be owners of assessed property?

MR. KEOGH: No, sir, but they are elected, Mr. Justice Brennan; they are elected. And they serve a -- they serve a legislative purpose. They enact laws, ordinances, and they serve also as other bodies such as the --

QUESTION: And who appoints the Board of Commissioners?

MR. KEOGH: The council appoints the boards of commissioners.

QUESTION: The municipal council?

MR. KEOGH: Right. So it's really rather confusing because the council could appoint anyone whom they wish. The --

and this is why I argue in the brief, Mr. Justice Brennan, and Mr. Chief Justice, Members of the Court, that really I believe the legislature looked at this not only as establishing a reasonable criteria to hold a nexus with an appointee to the parish, an interest in the community, but moreover, and more of a subtle reason, but more realistic, is to operate as a restraint on the unbridled authority of the council to make an appointment of anyone whom they desired that as I pointed out earlier might be someone just passing through town.

QUESTION: Well, he could be -- is there a personal property tax in the parish?

MR. KEOGH: Yes, sir, exactly.

QUESTION: Well, almost everybody has some personal property, doesn't he?

MR. KEOGH: And Mr. Justice White, this is the point that appeals to the --

QUESTION: Well, it isn't much of a limitation, then, under the discretion of the --

MR. KEOGH: No, sir, it really isn't.

QUESTION: Well, it isn't much -- if you say one of its purposes was to limit the discretion of the city council, it wasn't much of a limitation.

MR. KEOGH: It's very minimal. And this is why if we get to the three areas that Mr. Justice Marshall talked about in the Mergier case, if we get that deep into looking

at this type of --

QUESTION: Well, could I ask you, while I've got you interrupted, does the commission, the airport commission, have taxing authority?

MR. KEOGH: No, sir. It has the taxing authority if approved by the council.

QUESTION: Well --

MR. KEOGH: It has no primary authority.

QUESTION: And it doesn't have bonding authority.

MR. KEOGH: It has bonding authority if the council approves it.

QUESTION: Well, if -- yeah, but it doesn't have it?

MR. KEOGH: No, sir, it does not have it. No, sir.

] QUESTION: All right.

MR. KEOGH: You see, the way -- as I've tried to explain it --

QUESTION: And just because they say, some taxes will be necessary for an airport improvement, doesn't mean that the tax is going to be approved.

MR. KEOGH: Not a bit, Mr. Justice White. The fact of the matter is that every action they take, at the very next council meeting, appears on the council agenda under the heading of airport district business in this body --

QUESTION: But it does have the responsibility for running an airport.

MR. KEOGH: Well, for --

QUESTION: Is that right?

MR. KEOGH: The director has that responsibility.

But it has a responsibility --

QUESTION: Setting policy?

MR. KEOGH: Setting policy, yes, sir. and if the council objects to that policy when it sits as the airport district, it of course has the power under the Act of 1969, 151, to rescind it.

QUESTION: And if the airport is badly run, the commission shares responsibility for it.

MR. KEOGH: And the council.

QUESTION: Yes.

MR. KEOGH: Because you see, the commission is essentially a body of an advisory nature. It has no final authority whatsoever to even run the airport if the council as the district -- sitting as the district commissioners--

QUESTION: How long do you have to be a resident of the parish to be an elector?

MR. KEOGH: Sir?

QUESTION: How long do you have to be a resident of the parish to be an elector? To be qualified to vote?

MR. KEOGH: Very minimal. I'm not certain --

QUESTION: What is it, six months or three months?

MR. KEOGH: I think it's six months, Mr. Justice



White. I believe it's six months. It's a very minimal length of time. But the point --

QUESTION: Is it possible to have personal property taxed, and not be on the assessment rolls?

MR. KEOGH: It's -- now this is a fine point of fact that I can speak to; it's not in the record because we didn't send up -- it's perhaps in the transcript, but we didn't send up the pleadings, because we thought we'd just stick to the constitutional issues. But it is possible if they had sales tax on something like a Porsche automobile, Mr. Justice Blackmun. But the problem here is that the State law requires that if I own any piece of moveable property and this is not restricted -- the previous court decisions in the courts below have all held that this does not require someone to own real estate like freeholders in the Turner case or any type of property, it can be real, corporeal, incorporeal, moveable or immoveable. You can own one stick of furniture, and technically, the law of the State of Louisiana says that one that owns furniture must put their name on the assessment rolls. It's a voluntary act of assessment, just as we voluntarily pay our income tax.

QUESTION: But this doesn't apply to an automobile?

MR. KEOGH: Sir?

QUESTION: This doesn't apply to an automobile?

MR. KEOGH: Yes, sir.

QUESTION: Well, why didn't --

QUESTION: You not only put it down, but you have to put your race down.

MR. KEOGH: Yes, sir, you can -- and then --

QUESTION: Why do you have to put your race -- why do you have to put your race down?

MR. KEOGH: Race? Oh, I thought you said rates.

QUESTION: R-a-c-e.

MR. KEOGH: No, sir, I didn't know that, Mr. Justice Marshall. That's something new to me. I didn't know that.

QUESTION: Well, it's in the jurisdictional statement on page 25, quoting from Section 1957 of your code, the assessors throughout the state shall ascertain in so far as practicable whether the persons whose property is assessed by them and whose names figure on their assessment rolls are white or colored. In this day and age.

MR. KEOGH: I can't -- I find that hard to believe. Our legislature --

QUESTION: I do too.

MR. KEOGH: I find it hard to believe, Mr. Justice Marshall.

QUESTION: I do too.

MR. KEOGH: Our legislature some two years ago spent a considerable amount of time and money through the legislative council to go back through every law that was on

the books in the State of Louisiana and purge that type of material from the laws.

QUESTION: And they never suspected it would be as simple as that?

QUESTION: What Justice Marshall quotes also goes no and requires that that fact be noted, made mention thereof, on the assessment rolls. So that I suppose that the requirement of owning property assessed in the parish requires that the written record disclose the race of the person. If it's not that --

MR. KEOGH: I'm completely unprepared to respond to that question.

QUESTION: Well, but if that isn't the reason -- and of course you've said you're concerned about transients in the bus station, but they're not going to be there for six months, I don't suppose.

MR. KEOGH: Oh, no, sir.

QUESTION: What do you suppose this does --

MR. KEOGH: The council --

QUESTION: -- over and above the elector requirement? What does it add?

MR. KEOGH: Well, we feel, in defense of the legislature that enacted it, that the objective of course, as an objective test, is to create some additional nexus to the parish in the sense of one owning property would be more

interested in the affairs of the airport commission --

QUESTION: Supposing you had, for example, a young flight instructor who didn't own any property, lived there on a month to month basis, just out of the air force or something like that; he'd be disqualified as opposed to someone who happens to own an automobile. What is the reason?

MR. KEOGH: This is why I said earlier that we here today -- and I will be the first to concede this fact -- can think of a lot better reasons to have put in the law, but still, these are not wholly irrelevant. And I think the test, once you get beyond this strict --

QUESTION: Would you agree that if the language, instead of saying, and owning property assessed, and supposing it said, and having red hair; would that make it all right?

MR. KEOGH: That's a close qualification. This is the important part that Mr. Justice White brought up, and that is that this gentleman could have opened his classification by buying that single stick of furniture. Red hair is a closed --

QUESTION: Well, what if it said, having property assessed of a value over a thousand dollars? Maybe that --

MR. KEOGH: I think that would be -- I think that, too, would be a closed classification. Because one would then be penalizing the people who are too poor to own a thousand dollars worth of property.

QUESTION: How about over \$500? Would that also --

MR. KEOGH: It becomes a question of degree.

QUESTION: So that the nexus is, you want to be sure that this person owns at least thirty or forty dollars worth of property?

MR. KEOGH: They intend to remain in the parish, and have some interest in the commission. We submit --

QUESTION: Well, do you think that owning thirty or forty dollars worth of property is better evidence of that than six months residency?

MR. KEOGH: No, sir. I concede again, as I have before, that we can today come up with a lot better ways, but the rule --

QUESTION: You also concede that there must be some reason for this requirement in order for it to be constitutional?

MR. KEOGH: Yes, sir. And I think that reason is simply that the legislature thought that this, together with the qualified elector classification, would certainly indicate that the people who are appointed have some good intention to remain in the parish --

QUESTION: Under your personal property tax laws, is there a minimum figure that's tax exempt? What point in value do you start paying personal property tax?

MR. KEOGH: I cannot tell you.

QUESTION: But is there an exemption? Is it like



the Federal income tax?

MR. KEOGH: Oh, I'm certain there is. I'm certain there's --

QUESTION: So that whatever that is, it's an amount over that. So it better be less than a thousand dollars or you've conceded your case?

MR. KEOGH: One could appoint -- no, one could -- it would be like Federal income tax, I would assume; that is, that you report your income like you report your property, and then you take off the deduction.

QUESTION: Did you not suggest to me that if it is a thousand dollars or more, that would be unconstitutional?

MR. KEOGH: Sir, I said that might be a closed class, and as such, it would be very suspect. We'd go back to that strict scrutiny test --

QUESTION: We don't know the dimensions of this class, because we don't know where the exemption stops.

MR. KEOGH: Correct, your Honor.

QUESTION: It would still be assessed; that's your point.

MR. KEOGH: Yes, sir, it would still be assessed. It would be assessed, and the point is that whether it's for five dollars or a hundred, it's not a closed classification. The gentleman could go out and become a member of this class very readily. There's no inference in this case, for example,

as there was in Turner, of an invidious racial discrimination. This board of commissioners is composed of black and white, and the chairman is black. So we get entirely out of these considerations of equal protection of the law, and we really get into a consideration of, can a legislature -- if it please the Court, can a legislature set something as a qualification that is not wholly unreasonable; certainly not the best.

QUESTION: Mr. Keogh --

MR. KEOGH: And this is what I'm trying to say to you, your Honor. It's not the best. We can think of a lot better ones today, with the perspective since 1969. But is it wholly irrelevant? I think that's the test. And I don't think it is wholly irrelevant.

QUESTION: Mr. Keogh, is all --

QUESTION: -- distinguish Turner purely on race?

MR. KEOGH: Oh, no, sir, no, sir.

QUESTION: Pardon me.

QUESTION: How else do you distinguish it?

MR. KEOGH: I think in the Turner case, you have a situation where the Court, your Honors, recognized that in that case there was an invidious discrimination by virtue of the fact that the -- I'm trying to recall exactly what the language was; I brought the decision here to read, refer to, and I underlined those words.

QUESTION: Well, never mind.

QUESTION: Mr. Keogh?

MR. KEOGH: Yes, sir.

QUESTION: May I try again?

MR. KEOGH: Yes, sir, I'm sorry.

QUESTION: Is all tangible personal property assessed?

MR. KEOGH: Yes, sir.

QUESTION: So that one stick of furniture you mentioned would have to be reported?

MR. KEOGH: Yes, sir, subject to assessment. It's a voluntary assessment. One is required to report it to the assessor.

QUESTION: As of the first day of the year, or when?

MR. KEOGH: Yes, sir, there is a reporting period. And I think it's the first day of the year. And of course, if they don't, then of course, the commissioner has no way of knowing that the tax assessor.

Your Honor, Mr. Justice Blackmun, the part that I was going to refer you to is in your Turner case, your Honors kept pointing out that you were not prepared to hold that the Georgia requirement of a freeholder being the only person that could serve as a member of the board meant that, and I'm quoting from the decision, the possibility that other circumstances might present themselves in which a property

qualification for officeholder -- officeholding -- could survive constitutional scrutiny. That, plus the fact that in Turner there was a requirement that one be a owner of land, immovable real estate. That's what the word, freeholder, was defined as in the decision. And moreover, in Turner, the body that was being constituted was more of what we have called a political body making political decisions; namely, the Board of Education. This Board of Education was a far different instrumentality than the Board of Commissioners in East Baton Rouge Parish. It had final authority, Mr. Justice Blackmun; it had discretionary powers. It was, in fact, a legislative body. This is something we do not have in the instant case. Those are the three basic distinctions I have made to show that this is not in the same category as the Turner case.

And in conclusion, we just simply submit, if it please the Court, that in this particular situation, Turner is not applicable. And here we have a commission which, if the legislature of the State of Louisiana cannot set these not wholly unrealistic bases, wholly irrelevant, then we have a bunch of other commissions that are going to be in trouble. Because there are a lot of these type requirements that are made for service on zoning bodies, for example, Mr. Chief Justice, zoning bodies and many others. And we submit that that's why the courts below should be sustained.

MR. CHIEF JUSTICE BURGER: Do you have anything further, Mr. Adcock?

MR. ADCOCK: Yes, very briefly.

REBUTTAL ARGUMENT OF HERSCHEL C. ADCOCK, ESQ.,  
ON BEHALF OF THE APPELLANT

MR. ADCOCK: Mr. Chief Justice, may it please the Court:

Counsellor stated at the outset that he did not see where we got the notion of the fundamental right. I want to once again direct you to page 7 of our brief, language from the Turner v. Fouche case.

The Court specifically held that the State may not deny to some the privilege of holding public office that extends to others on the basis of distinctions that violate the Federal constitution guarantees.

We submit that this is a public body. Contrary to what Mr. Keogh said, if it was just sitting there, what is the purpose of having it? This body can enter into leases, where the parish's property is leased to persons, the rent-a-car people, the other airport hangars, are all leased. And this body is the one that enters into those leases. It can spend money. It can authorize the expenditure of different funds.

And we further submit that this requirement is one that has found its way in a statute, and there is no reasonable basis. For instance, there's no requirement that the director



of finance of the parish of East Baton Rouge own property assessed in Louisiana, East Baton Rouge. There's no requirement that the director of the airport own property assessed in East Baton Rouge. These are appointed positions. And there's no requirement that the parish attorney, who is likewise appointed, own property assessed in the parish of East Baton Rouge.

QUESTION: I take, though, that the -- a parish councilman, he's elected, he doesn't have to own property, but if he's to be elected to the commission, he has to own assessed property, doesn't he?

MR. ADCOCK: That is correct, under the dictates of this statute.

We have a situation here Mr. Chappelle did actually own property on which taxes were paid. The court found that he did own property, and that he had paid taxes. But the mere fact that this property was not listed on the assessment rolls was the means they used to disqualify him and remove him from this commission.

QUESTION: But you said it was a voluntary system, or your friend did. Any taxpayer can get himself on the assessment rolls without much difficulty, can't he?

MR. ADCOCK: Mr. Justice, no one does it.

QUESTION: No one does.

MR. ADCOCK: This is a statute that is sitting on

the books, and I know of no person --

QUESTION: Maybe you need to broaden the statute, then.

MR. ADCOCK: Yes, sir. Maybe there should be a requirement of something that is enforced. But this is a statute that --

QUESTION: You mean nobody files a return?

MR. ADCOCK: No, sir; no one files a return. The exemption is so great that there are no personal property taxes except with the businesses.

QUESTION: How do you get anybody on the board, then, on the commission?

MR. ADCOCK: The real property --

QUESTION: I see.

MR. ADCOCK: -- must be on the taxing rolls. And I truthfully believe that this is what the legislature meant. However, property, as it's defined in Louisiana and in most other jurisdictions, it's either personal or real property.

QUESTION: Do you accept your opponent's distinction, or distinguishing Turner as he did on the three propositions?

MR. ADCOCK: NO, sir, I truthfully believe --

QUESTION: Do you feel Turner applies, or has no relevancy?

MR. ADCOCK: I think Turner applies to this decision. It's as squarely on point as any decision that I would want to

rely, in my opinion.

QUESTION: At least one member of your State Supreme Court felt so, didn't he?

MR. ADCOCK: Yes, sir.

Thank you very much.

MR. CHIEF JUSTICE BURGER: The case is submitted.

[Whereupon, at 2:59 o'clock, p.m., the case in the above-entitled matter was submitted.]

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