

# Supreme Court of the United States

October  
[REDACTED] TERM, 1969

BRARY  
Supreme Court, U. S.  
NOV 17 1969

In the Matter of:

Docket No. 37

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DELLA HADLEY, et al., :

Appellants :

vs. :

THE JUNIOR COLLEGE DISTRICT OF :

METROPOLITAN KANSAS CITY, MISSOURI, :

et al. :

Appellees :

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Place Washington, D. C.  
Date November 10, 1969

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Irving Achtenberg, Esq., on behalf of  
Appellants

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William J. Burrell, Esq., on behalf of  
Appellees

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on behalf of the Appellees

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IN THE SUPREME COURT OF THE UNITED STATES

October

TERM 1969

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DELLA HADLEY, ET AL.,	)	
	)	
Appellants	)	
	)	
vs	)	No. 37
	)	
THE JUNIOR COLLEGE DISTRICT OF	)	
METROPOLITAN KANSAS CITY, MISSOURI,	)	
ET AL.,	)	
	)	
Appellees	)	
	)	

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Washington, D. C.

Monday, November 10, 1969

The above-entitled matter came on for argument at  
1:30 o'clock p.m.

BEFORE:

- WARREN E. BURGER, Chief Justice
- HUGO L. BLACK, Associate Justice
- WILLIAM O. DOUGLAS, Associate Justice
- JOHN M. HARLAN, Associate Justice
- WILLIAM J. BRENNAN, JR., Associate Justice
- POTTER STEWART, Associate Justice
- BYRON R. WHITE, Associate Justice
- THURGOOD MARSHALL, Associate Justice

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1           The Missouri Supreme Court sustained the Trial Court,  
2           citing the Sailors case of this Court as support for its  
3           position and distinguishing the case from the Avery case,  
4           decided by this Court.

5           The Plaintiffs have appealed to this Court. The  
6           issue is a relative and simple one. It is: Does the one-man  
7           one-vote doctrine, an application of the Equal Protection Clause  
8           of the 14th Amendment, prevent, or is it violated by the  
9           Missouri peculiar statutory provision for the selection of  
10          State Junior College Trustees from election districts within the  
11          junior college district.

12          If I may, I think the issue might be broken down into  
13          two subissues. First of all, does the one-man, one-vote  
14          doctrine apply to school districts such as the one here.

15          Secondly, if, as the Appellants meant that the doc-  
16          trine does apply, then does the Missouri statutory provision  
17          constitute invidious discrimination and is it violative of the  
18          principles. The Appellants believe that the doctrine does  
19          apply and we believe that the Missouri statutory provisions not  
20          only permit, but in fact, compel by the statutory formula that  
21          there be invidious discrimination by residence of voters, and  
22          that that discrimination is directed in only one direction and  
23          favors the suburban or the small component school district  
24          voters as against the voters in the large central city districts.

25          The facts are presented -- or rather, the facts present

1 the issue with almost Hornbook(?) simplicity.

2 Under Missouri statutes a junior college district  
3 may be formed by the voters of a group of adjacent school  
4 districts, simply by their majority vote they may form a state  
5 junior college district which then has as its boundaries the  
6 outer boundaries of the component school districts. Now, at  
7 this point the school districts as such seems to have a role  
8 to play in the functioning of the junior college district. By  
9 the formula, they simply become election districts thereafter  
10 for the erection of junior college districts. And, ofcourse,  
11 the junior college boundaries are coterminous with the boun-  
12 daries of the school district.

13 Q Mr. Achtenberg, who takes the lead in the for-  
14 mation of this coalition of these school districts in order to  
15 form a junior college district; how does that work?

16 A Well, I suppose, Mr. Justice, that it occurs as  
17 most citizen action occurs. I suppose groups get together and  
18 talk to their legislators --

19 Q The legislators, as I understand it, don't have  
20 anything to do with it now that they have passed this authorizing  
21 law; isn't that correct?

22 A That is correct; yes, sir. By petition and then  
23 by vote of the people.

24 Q Petition of a certain X percentage of all of the  
25 people to put the issue on the ballot; is that it?

1 A Yes; that is correct.

2 Q But who is it that selects the -- that the  
3 proposed junior college district shall be these seven counties  
4 for example? They are probably not important in this case,  
5 although I think that it may be of some importance 'because it  
6 may go to the purpose of this.

7 A The statute provides, and I will read it:"  
8 "Whenever a petition signed by voters from each component  
9 school district within a proposed junior college district equal in  
10 number to five percent of the <sup>number of</sup> votes cast for the director receiving  
11 the greatest number of votes within each component school dis-  
12 trict, that the last preceding school election in each school  
13 district at which a director was elected, is presented to the  
14 State Board of Education praying that a junior college district  
15 be organized; for the purpose of offering junior college (13th  
16 and 14th year courses) the State Board of Education determines  
17 that the area proposed to be included within the districts  
18 meets the standards established by it under Sections 178770 to  
19 890; it shall order an election held with the proposed -- within  
20 the proposed district to vote under the proposal and to elect  
21 trustees."

22 Q The legislature does not impose any limitation  
23 upon how many school districts shall coalesce to form, nor any  
24 minimum number; is that correct?

25 A Yes, sir.



1 Q And so it's a matter of voluntarily getting  
2 together of a number of school districts in order to form a  
3 junior college district, with 5 percent of the vote in each  
4 school district. And, somebody, obviously, has totake the  
5 leadership in proposing the size and contours of the proposed  
6 junior college district. As I understand the statute it  
7 doesn't provide who shall take the leadership. This is  
8 citizen leadership, isn't it?

9 A It would be simply citizen action by voluntary  
10 citizens groups who simply get together and decide that it  
11 would be an advantage to the community to have a state junior  
12 college district.

13 Q To a community made up of several school dis-  
14 tricts, and I suppose as an incentive -- I suppose, typically,  
15 if this one is to go, it's a core metropolitan school district,  
16 plus some satellite rural or village school districts; isn't  
17 that it?

18 A That's correct.

19 Q And I suppose there has to be some incentive  
20 to the rural or village satellite districts to join this core  
21 area in order to form a junior college district.

22 A That's an assumption which I think is made in  
23 the Appellee's brief. I --

24 Q Well, if it is an assumption or if it is a  
25 reality --

1           A     I think it is equally argued that the advan-  
2 tages of the district are as advantageous to all the members  
3 who come in that they should come in on an equal basis. I  
4 don't think that there is any statutory or community history  
5 which indicates that the assertion was made to the suburban  
6 district that they would get a greater vote by coming in, so  
7 that the people within the inner city were told that you will  
8 not get a greater vote. It seems to me --

9           Q     Well, that's what they were told by the  
10 legislature that set up this system, in fact. To use your  
11 phrase, "weighted vote."

12          A     Well, the statute certainly does provide --

13          Q     That is against that background that this  
14 junior college was created.

15          A     Well, I can only say that I know of no factual  
16 history background to support this and I would argue that if  
17 there is such a background, it is no more constitutionally  
18 permissible than perhaps the historical development of the  
19 one legislator per county, which this Court struck down in  
20 Reynolds versus Sims.

21          Q     How new is this legislation? This authorizing  
22 legislation for junior college districts.

23          A     About six years. The Kansas City junior  
24 college district was formed in about '64.

25          Q     Thank you; I am sorry to have taken so much of

1 your time.

2 A Now, having formed the college district, we are  
3 now concerned with the statutory provision by which the  
4 trustees are elected; and that is by a unique Missouri for-  
5 mula which deals not with population but what is called in  
6 Missouri statutes, school enumeration. And school enumeration  
7 by statute, is simply the area enumeration in a school dis-  
8 trict of those persons from the ages of 6 to 20 and I presume  
9 that the -- well, first of all, the purpose of this enumera-  
10 tion is for allocation of funds for school districts. And I  
11 assume that the purpose for using enumeration in terms of the  
12 erection structure in junior college districts is that it is  
13 a figure that is provided for in each school district, whereas  
14 population figures might not be broken down by school dis-  
15 tricts.

16 But, in any event, the statute does provide that  
17 where that -- first of all the general provision is that  
18 election of junior college trustees shall be at large, with  
19 the exception, however, that if in that junior college district  
20 there is what we would call a component school district and a  
21 school enumeration of more than one-third but less than 50  
22 percent of the total school enumeration of the junior college  
23 district, then the voters of that component school district  
24 shall have one-third and since there are six trustees provided  
25 by law, they will have two of the six trustees. And, in any

1 district where a component school district has half the two-  
2 thirds of the enumeration of the total district, then the  
3 voters of that district shall vote for three of the six trus-  
4 tees and in the third bracket in the formula is any component  
5 school district has from two-thirds upwards of the entire  
6 junior college district, then it shall have two-thirds or  
7 4.

8 Now, in each case, the remainder of the trustees are  
9 not elected by the other component school districts, but what  
10 I would call an election district formed of all the remaining  
11 school districts within the junior college district.

12 So, what we have here is that the large district,  
13 traditionally, and in fact, normally the central city district,  
14 becomes one election district and the grouping of small  
15 satellite or suburban school districts become another elec-  
16 tion district, whether they be more or less, in fact, than the  
17 total of the central school district. Of course, the central  
18 school district would have only a third, so that although the  
19 formula, by automatic effect is weighted in favor of the subur-  
20 ban districts, you could have a situation where the suburban  
21 districts actually have a greater majority of the total school  
22 situation or the school enumeration than the central city  
23 district.

24 I should make it clear that this is not a question  
25 of a limited vote. All voters throughout the entire district

1 vote and the school boards themselves have no law whatsoever  
2 to pray once the district is formed, in the operation or  
3 functioning of the junior college district.

4 Now, how has it worked in practice? As we have set  
5 out in our brief and in the appendix, since its formation the  
6 Kansas City School District has had from 59 and a half to 63  
7 and a half percent of the total enumeration of the junior  
8 college district of Greater Kansas City, and yet during that  
9 period, by the formula, it has always had only half, or three  
10 of the six trustees.

11 Q How would you give them what they deserve?

12 A Well, we point out to the Court that under the  
13 statute that if the Court invalidates simply the subdistrict  
14 or component district formula, the trustees, under the re-  
15 maining portion of the statute may be elected at large.

16 Q That would mean that Kansas City would have all  
17 of them; wouldn't it?

18 A That has not been historically true. I think  
19 that when the community works as a group, subordinate groups  
20 have their voice heard. The city is not homogeneous. On the  
21 issue, for example, of minority rights, the poverty program,  
22 the rats in the inner city, there are many people within the  
23 city itself that are against what I would think of as progres-  
24 sive schools. So that the central city is not homogeneous and  
25 in producing this elective or voter's result there are many

1 small diversionary groups which work together and it's a  
2 process in an at-large election by which different groups are  
3 represented and I can only state that very easily in Kansas  
4 City where our City Council is elected from part at-large, the  
5 Negro population of Kansas City which is far less than half,  
6 has one Negro Councilman at-large; not because of the power of  
7 the majority, but because as a minority they exercise a voice  
8 which is heard in the combined elective process. I think the  
9 same process would work here.

10           However, we are not -- and this Court is not com-  
11 mitted to telling the State of Missouri that it must read the  
12 statute so that these trustees are elected at large. The  
13 Legislature of Missouri has a right to rewrite this law and to  
14 set up election districts and there are certainly arguments  
15 for election districts so that if there are area viewpoints,  
16 those viewpoints may be represented. All we say is

17           All we say is if such sub-election districts are  
18 established, that they be equal in population so that one  
19 group in one area does not have a greater rate in proportion  
20 with the population than does the group in another area.

21           Q     This is population; not school enumeration?

22           Q     When you say "equal in population," you mean --

23           A     Well, for the purposes of our discussion and  
24 throughout this case we have considered that school enumera-  
25 tion, being a segment of the population, is proportionate to

1 population. There is no evidence --

2 Q Is it like the registered voter's situation we  
3 had in the Kawaian case?

4 A I would say so. The statistics have not been  
5 assembled in any encyclopedic way, but basically the 6 to 20  
6 population would tend to follow the general population.

7 Q I think we said in Burns that registered voters  
8 might be a permissible base, provided it was the substantial  
9 equivalent of the general population base.

10 A That is correct.

11 Q And you are suggesting that would apply here  
12 using a school enumeration base?

13 A We do, sir. We say simply that if the Court  
14 proceeds on the premise which we believe to be a fact, that  
15 school enumeration is proportionate, then we are simply estab-  
16 lishing a formula for population. And then the discriminatory  
17 formula of the bracketing, moving in one direction, makes it  
18 an improper population formula.

19 On the other hand, if the Appellees argue that  
20 enumeration is not proportionate to population and there is no  
21 evidence in the record to support any such position, but if  
22 they are to argue that this is a different type of tabulation  
23 then it's our position that there is no -- first of all, this  
24 is not the special group that votes the 6 to 20-year-old is  
25 not a limited elector, such as was considered by this Court in

1 Kramer. It simply would then be an argument that an area  
2 which has a different ratio of 6 to 20-year-olds, all the  
3 voters in that area should have a specially-weighted vote.  
4 And we argue that this would be a violation of the one-man,  
5 one-vote doctrine.

6 I would like to say, expanding the facts in  
7 Missouri beyond the Kansas City School Junior College District,  
8 that the same thing has happened throughout the state. There  
9 are 9 state junior college districts. Three of them do not  
10 have any district in which the fractional formula applies, so  
11 their trustees are elected at large. In the remaining six  
12 districts, where the situation does pertain we find that in  
13 five of the six the discriminatory formula has operated so that  
14 in the statistics in our brief we show that in five out of the  
15 six the discrimination proceeds close to the extreme range of  
16 violation. So, that what we have is that in five out of the  
17 six the weighting of the vote is from one-and-a-half to one  
18 to two-to-one against the large component school districts.

19 Now, I'd like to summarize very quickly the func-  
20 tions of a junior college under Missouri law. It may sue or  
21 be sued; it may levy and collect taxes; it may issue bonds;  
22 it may exercise the corporate powers of other school districts,  
23 providing instruction, set fees; conduct hearings on dis-  
24 ciplinary charges; make rules and regulations for its organi-  
25 zation and the governing of the district; let contracts and



1 employ and discharge teachers; approve bills; appoint employees  
2 and define their duties and compensation; pass on the annexa-  
3 tion of additional school districts to the junior college  
4 district; acquire property by condemnation; hold title to the  
5 property of the district and provide for its maintenance and  
6 make rules that govern the schooling of its students.

7 Now, as to the decisional developments of the one-man,  
8 one-vote doctrine to the point where we believe it applies in  
9 this situation.

10 This Court first applied the doctrine in Reynolds  
11 versus Sims to the state legislature. Then in Wesberry versus  
12 Sanders, it extended the doctrine or applied it to Congress-  
13 ional Districts. And then in Avery it extended it to govern-  
14 ing bodies of counties. And certainly, in the language of that  
15 decision by Justice White, the concept of local government  
16 included, not only counties, but city councils and school  
17 boards.

18 This Court has not directly faced the problem in a  
19 school district. Other courts have, however. The Iowa  
20 Supreme Court, in Meyer versus Board of Education, held that  
21 the doctrine did apply. The Tennessee District Court in  
22 Strickland versus Burns found it applicable and in Delozier  
23 versus Tyrone School Board, the Federal District Court in  
24 Pennsylvania applied the doctrine.

25 Other courts have also applied the doctrine to cities.

1 In fact, the Missouri Supreme Court itself applied it to a  
2 city council of a city of about 5,000 population, something  
3 less, perhaps, than the student population of this junior  
4 college. In Armentrout versus Schooler; the Fourth Circuit  
5 in Ellis versus City Council of Baltimore, applied this  
6 doctrine to a city council.

7 We believe that the constitutional principle which  
8 is enunciated by these cases is that where a governmental  
9 agency making substantial governmental decisions is elected by  
10 vote of the general electors, each man's vote must be weighted  
11 equally. And as a --

12 Q I am not sure what provision of the  
13 constitution --

14 A The Equal Protection Clause of the 14th  
15 Amendment.

16 Q That had nothing to do with the Sanders case,  
17 did it?

18 A I'm sorry.

19 Q That clause of the 14th Amendment had nothing  
20 to do with the Wesberry case, did it?

21 A Well, Wesberry was based on Article I but it  
22 seems to me that whether we're relying on that provision of the  
23 constitution, or the 14th amendment, that the constitutional  
24 concept of the voter's rights and the quality of voter's rights  
25 are the same.

1 Q Well, my question -- where in the constitution  
2 do you find it -- do you find that overriding concept that  
3 apparently overrides the original Article I, as well as to the  
4 1816 Amendment in Amendment 14.

5 A I would say so, although this Court has seemed  
6 to place the Congressional Districting in Article I and  
7 legislative districting and county districting on the 14th  
8 Amendment. It seems to me that the underlying democratic  
9 constitutional principle is the same.

10 Q I was just wondering where did you find that  
11 underlying concept in the constitution?

12 A In both those clauses. And I suppose in the  
13 Federalist Papers and the proceedings of the Constitutional  
14 Convention with which I won't bore this Court.

15 Q Would you mind telling me if the record shows  
16 anywhere what's really the cause of this finding?

17 A Well, that requires me to express my opinion.

18 Q I said if the record shows it.

19 A Well, I think I can answer it this way on the  
20 record. This suit was brought by voters in the central city  
21 district or the Kansas City School District portion of the  
22 Junior College District in two counts. And the first count  
23 sought to resist the decision of the board of trustees to  
24 rotate the first junior college campus in the suburbs rather  
25 than in the central city. And I would say that implicit in

1 the litigation is the conflict, perhaps, between the people  
2 who move to the suburbs and --

3 Q Difference in the city and the suburbs?

4 A I would say so; yes, sir. And the existing  
5 conflict which confronts our school systems today.

6 Q Does Missouri elect all of its school  
7 trustees?

8 A Yes, sir.

9 Q College and high school?

10 A Well, no. The -- what we call 3 and 6  
11 director school districts, which include most of the grade  
12 and high school districts and consolidated districts, those  
13 call for election by the general electors. The only  
14 trustees in our Missouri system which are not elected are the  
15 trustees of the state university and state college, which  
16 are appointed by the Governor.

17 Q How are they selected?

18 A Appointment by the Governor.

19 Q I presume the Governor could appoint -- the  
20 law could provide for the Governor to appoint these trustees?

21 A Well, Mr. Justice, you asked me a question  
22 which I think is not encompassed within the issues in this  
23 case and again, it's my opinion and I don't think this Court  
24 has yet to face that question. There was some suggestion in  
25 Sailors that -- more than a suggestion that the county board

1 of education there was such a governmental agency that  
2 appointment was acceptable because this Court based its  
3 decision in that case on the fact that the selection of the  
4 trustees of the county board by appointment from the boards  
5 of the school districts within the county, was an appointment  
6 process.

7 I question whether an operating school district  
8 at the local level -- I question from a democratic process  
9 standpoint, whether it be desirable that they be appointed.

10 Q I'm not talking about desirable; but  
11 constitutional.

12 A I don't know. This Court has not given me  
13 any guidance on that point and I don't think it's presented  
14 in this case.

15 Q Has anybody challenged such a law in any of the  
16 states?as providing that the governor can appoint trustees?

17 A Well, certainly in the Sailor case this Court  
18 said by its decision that in a different type of a school  
19 district, a county board of education, that the appointive  
20 process was acceptable. Now, I see great differences between  
21 a county board of education where there are local area school  
22 boards or boards of education and the situation here. The  
23 county boards of education are a rather atrophied and vestigial  
24 type of a governmental agency and in many cases they are  
25 being abolished. They are not districts which operate school

1 systems.

2 I think, really, Mr. Justice, you are presenting  
3 the question that is a legislative versus administrative  
4 question, which has been presented in several of these cases  
5 and it seems to me it may have to be decided on a case-by-  
6 case basis where there is a law requiring or providing for  
7 appointment if it were to be challenged it would have to be  
8 on the basis of: is there a substantial governmental function  
9 here which requires election by the people. I do not think  
10 it is in any way presented in this case because the statute  
11 and the determination of the legislature of Missouri was that  
12 this be an elective process.

13 Q A great many important government functions  
14 are performed by nonelected officials; are they not?

15 A Yes, sir. And I simply say that we're not  
16 faced with the decision in this case of deciding whether or  
17 not which should be an appointive or elective office.

18 Q And when these functions are performed by such  
19 appointed officials you cannot get the perfect distribution  
20 that you are -- not necessarily that you are aiming for, but  
21 that is involved in district-by-district selection.

22 A Yes, sir. I see your point. That is true.

23 I'd like to take just a moment on the question of  
24 substantial government function. The Appellees speak of  
25 school districts in the context of special districts. We

1 submit that that language is a little more meaningless and  
2 in any event, a school district is much closer to a city  
3 council or a county government than to the traditional con-  
4 cept of a special district. I would prefer to call them  
5 "special use districts," "special assessment district," or  
6 "special benefit districts."

7 They have normally three characteristics: first  
8 of all they specifically affect one area of the community:  
9 the water district; the sewer district; the levee district,  
10 affects the property owners directly who are protected by  
11 that improvement.

12 Secondly, normally the assessment, the tax for  
13 that improvement is against that special benefitted group.  
14 And thirdly, it is common for that specially benefitted and  
15 specially-taxed group to have the right to be the special  
16 director.

17 Now, not one of these criteria exists in terms of  
18 a school district. Under decisions of this Court and our  
19 traditional concepts of the American public school system  
20 all the people of the community are benefitted by the exist-  
21 ence of public schools.

22 Second of all, by Missouri Law all the citizens of  
23 the community are taxed for the schools, either by real  
24 property tax or through the personal property tax or to some  
25 extent, by the State Income Tax.

1           And thirdly, we have a general electorate so that  
2 none of the criteria of the special districts apply. In  
3 terms of function, I think it equally significant that we're  
4 not talking about the narrow function of a special use  
5 district. In a sewer district you run a sewer; in a water  
6 district you run a water line; it's a one-step operation and  
7 from then on the function of that board, whether it be elected  
8 or appointed, is simply a minor matter of collection of  
9 annual assessments and maintenance of the improvements. This  
10 is a far cry from the complex problems presented in the con-  
11 text of today's educational problems by our school systems.

12           If the Court please, I'll reserve the balance  
13 for rebuttal.

14           Q    May I ask you just a moment -- are the  
15 policies of the local school districts circumscribed by the  
16 policies announced by a state board of education? Are they  
17 under the control of the state board of education?

18           A    Well, to some slight extent; but basically  
19 the school boards are autonomous. They make all the major  
20 decisions. They are prescribed to a limited extent by vote  
21 of the people, in terms, for example, of capital improvements  
22 or changes in school revenues the school boards --

23           Q    What about curriculum?

24           A    Curriculum is the decision of the trustees.

25           Q    And qualifications of teachers?



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A The same.

Q The state board doesn't decide curriculum?

A Well, it's my understanding that the state board of education is, in a sense, advisory. Our state laws give great power to the local school boards except for the familiar exception of arbitrary and unreasonable exercise of power. But other than that, it is my understanding that basically the state board is advisory; educational in aspect; forward-thinking in terms of planning; but it is not a step in the governmental structure.

The local boards run their schools.

Q Did I understand you to say sometime ago in reading over the list of powers of these trustees, that they have the power to levy taxes?

A As subject to voter approval.

Q To what approval?

A Voter approval; yes, sir.

Q They have to submit it to the voters?

A That's correct.

MR. CHIEF JUSTICE BURGER: Mr. Burrell.

ORAL ARGUMENT BY WILLIAM J. BURRELL, ESQ.

ON BEHALF OF APPELLEES

MR. BURRELL: Mr. Chief Justice, and may it please the Court: I think it is important here as we go into some slight more detail to the type of district and junior college

1 which we are talking about and as to how it is organized.

2           Some of this has been alluded to. In the first  
3 place, there must be, under this 1961 law of the Missouri  
4 Legislature, a petition from the voters -- a certain percen-  
5 tage of the voters of each component school district. Now,  
6 these component school districts generally have been furnish-  
7 ing elementary and secondary education to the youth in their  
8 particular district and they must sign this petition -- a  
9 certain percentage of them -- in each component school dis-  
10 trict to form a junior college district comprising a number,  
11 usually -- it could be one -- in practice it has been a  
12 number of component school districts.

13           Once this petition has been signed by the proper  
14 number of voters it has to be approved by the state board of  
15 education, which is an appointed body appointed by the Gover-  
16 nor.

17           Q     You mean by that the state board could veto the  
18 construction of the junior college?

19           A     Mr. Justice Brennan, that is correct.

20           Q     I see. The board could veto it?

21           A     The board could -- yes, the standards given to  
22 the board are three: the need, which is somewhat general;  
23 a fourth junior college in the area; whether or not there are  
24 a sufficient number of highschool students and whether or not  
25 there is a tax base sufficient to support a junior college.

1           And once the state board of education has approved  
2 this petition then there is an at-large election in the pro-  
3 posed -- in the entire proposed junior college district, as  
4 to whether or not there should be a junior college district  
5 organized in that area. And only if the majority of all the  
6 voters in an at-large election approves this petition, can a  
7 junior college district be organized.

8           Q     There need not be a majority in each compon-  
9 ent school district?

10          A     That is correct; that is correct. There must  
11 be a majority at an at-large election in the entire district.

12           Then the state board certifies that this petition  
13 has been passed and the trustees are to be elected and there  
14 is, and that is what is before the Court here, a statutory  
15 formula for the election of the trustees of the junior  
16 college. And in spite of all that has been said here, all  
17 that this board does -- or this six-member board of trustees  
18 is operate one junior college in the junior college district.

19          Q     Was all this legislation passed together about  
20 six years ago?

21          A     It was all passed, substantially, in 1961.

22          Q     Before that did you have any provisions for  
23 junior colleges?

24          A     Before that, the individual component school  
25 districts could have their own junior colleges like they have

1 their own high schools.

2 Q Just the one district junior college?

3 A That is correct. And at that time and it is,  
4 I think of considerable importance, there were seven such  
5 junior colleges in Missouri with a total number of students of  
6 somewhat over 5,000.

7 Q My question was directed to the inquiry of  
8 whether or not it is of any significance that this whole  
9 creation of this whole junior college district with a majority  
10 referendum vote was against the background of this very legis-  
11 lative provision for representation that is now being attacked.  
12 In other words, an action in reliance, so to speak. The  
13 voters against the district, part and parcel of the whole  
14 system.

15 A I am not sure that I understand the question,  
16 but --

17 Q I'm not sure I do, either, but I --

18 A -- that the law was passed in order to foster  
19 and encourage development of the junior college system.

20 Q By encouraging several school districts to get  
21 together to form a junior college district.

22 A That is correct.

23 Q And those that did get together did so against  
24 their understanding that they would be represented on that  
25 board? That was my question.

1           A     That is correct.

2                     And as a result of that there are today -- I  
3 think there was at the time these briefs were filed, ten  
4 junior college districts in Missouri with about 29,000  
5 students. And today there are 12, I think, with somewhat  
6 over 30,000 students and with components covering an area of  
7 component school districts of somewhere near 120 as opposed to  
8 the seven junior colleges in the seven component districts  
9 that were affected in 1961.

10           Q     It's probably not material here, but how does  
11 the curriculum compare with the curriculum of the state univer-  
12 sity?

13           A     Now, I will say this, that the -- and this  
14 would answer in part the question of Mr. Justice White -- the  
15 curriculum is uniform curriculum for all junior colleges. It  
16 is controlled by the state board of education, with a view  
17 that by statute they must consider the admission requirements  
18 of the University of Missouri. And so that this is really  
19 designed -- I know that a year ago, for example, in Kansas  
20 City we could enter -- the charge for students in our district  
21 was \$4 per credit hour or if you took an ordinary course of  
22 15 hours it was \$60 tuition but the students in our district  
23 could graduate and the curriculum was adjusted so that they  
24 can go from the junior college to the University of Missouri  
25 if they desire to follow that type of program.

1 Q Mr. Burrell, who determines the location of  
2 the junior colleges?

3 A That is determined by the board of trustees.

4 Q And is that subject to the veto of the -- of  
5 any state board?

6 A No, it is not.

7 Q And who determines how much it's going to cost?

8 A Well, with respect to getting the money to  
9 build the building and acquire the land that would have to be  
10 normally done by a bond issue which would be voted upon by the  
11 people.

12 Q But the design of the buildings and the amount  
13 going to be spent for their construction and all that, is that  
14 all determined by the board of trustees?

15 A Subject to getting money by the bond approval.

16 Q That's a bond approval of the voters?

17 A That is correct. That would require actually a  
18 two-thirds vote.

19 Q And did I understand Mr. Achtenberg to say that  
20 the real basis of the dispute here was among trustees whether  
21 the location should be in the suburbs or in the central city?

22 A I think that that is the way it conceivably  
23 started. It was Count 1 of the petition here; it was an  
24 objection to the location of the campus.

25 Q What is the term of office of the trustees?

1           A     The term of office is six years, but they are  
2 staggered so there are two elected each two years.

3           Q     How about the current expenses -- the current  
4 running expenses?

5           A     By when the voters vote to organize the district  
6 they specifically authorize a levy in our district of up to  
7 ten cents per hundred dollar valuation in our district by the  
8 board of trustees without voter approval.

9           Q     Well, what's the difference between that and the  
10 regular school district?

11          A     Well, there is quite a little difference there  
12 -- there is quite a little difference in amount, for example.

13          Q     No; I mean as to how it's done.

14          A     I don't think that basically there is any  
15 general difference there. Now, we in the junior college dis-  
16 trict can levy up to ten cents without voter approval. It has  
17 been authorized however -- the voters have been presented --

18          Q     That's all in the one package that was agreed  
19 on?

20          A     That is correct, Mr. Justice; that is one  
21 package they agreed on.

22          Q     Well, essentially, what's the difference between  
23 that and the -- say the Kansas City School Board, as to their  
24 authority; their money, et cetera, et cetera, et cetera?

25          A     Well, the Kansas City School Board, I believe

1 that this is correct. You can go up to \$3.75 per hundred  
2 dollar valuation.

3 Q I mean how are the members picked?

4 A How are the members picked? There is a new  
5 law which just went into effect in January with the Kansas  
6 City School Board, and I'm not certain about the exact pro-  
7 visions of it.

8 Q What about the old ones; were they elected or  
9 appointed?

10 A Under the old law if I'm not mistaken, we have  
11 two political parties, so that would be half of the board for  
12 each political party and then they were all voted on and just  
13 by some understanding there was never any opposition, if my  
14 recollection is correct.

15 Q Well, the trustee board here is performing an  
16 essential governmental functions governing its usually the  
17 authority of the state; no question about any of that?

18 A Well, there is no question that it is an  
19 instrumentality of the state. I would suggest that it is a  
20 special corporate body with the sole function of operating  
21 a two-year college.

22 Q But is there any difference between the school  
23 board that operates a two-year college and the school board  
24 that operates six years? There's no fundamental difference?

25 A There's no fundamental difference, except in



1 degree, and I suppose the junior college has less impact on  
2 the entire area than the elementary and the high schools do.

3 Q But it's the same type of function?

4 A Well, it's education.

5 Q The same type of function as any --

6 A The same type of function; that is correct.

7 Q I mean I'm not trying to -- I was just trying  
8 to get it in perspective as to a regular school board and the  
9 difference in this law passed. You had junior colleges before  
10 and they were operated by whom?

11 A They were operated by the various components;  
12 by component school districts.

13 Q Like the county board and city board, or were they  
14 junior college boards?

15 A No, they were what we would call -- most of  
16 them were what we would call a six-member board in local  
17 school districts.

18 Q That's what I mean; they wouldn't be just for  
19 the junior colleges.

20 A No. Under the old system they would have  
21 operated the junior college; the high school and the elementary  
22 school.

23 Q Thank you.

24 A I might say here that the -- we have six  
25 trustees and the allocation is on the basis of school

1 enumeration, which has been as suggested to you, the number  
2 of persons in the component school district between the ages  
3 of six and 20. And I think that is related to the interest  
4 of the particular component school districts and in the junior  
5 college program.

6 And the formula, which we submit, is not invidious  
7 and is reasonable, is that if there -- if one component has a  
8 third of the trustees it may select two of the six; if it has  
9 50 percent it may select three; if it has two-thirds it may  
10 select four. The remaining trustees are selected from the  
11 remaining component school districts. It's conceivable here  
12 that you could have two component school districts each  
13 selecting two trustees with the remainder selected outside  
14 these two component school districts.

15 The metropolitan junior college district is the  
16 one that is before the Court. At the time that this action was  
17 instituted we had 63 percent of the school enumerated persons  
18 in our district and elected three trustees. At the time of  
19 these briefs we had 59 and I think at the present time we have  
20 57 percent of the total number of school enumerating persons  
21 in the entire junior college district.

22 It is an urban-suburban rural composite. I think  
23 that is what we do have in most of our junior college systems,  
24 a combination of urban-suburban and rural areas. We have, in  
25 Kansas City, eight component school districts; 400 square miles

1 in all, embracing at least part of four counties.

2 I think that the metropolitan junior college dis-  
3 trict or junior college district in Missouri is truly a  
4 special-purpose body. The Court below, the Missouri Supreme  
5 Court, in a six to one decision upholding this law, stated it  
6 is truly a special purpose unit. There was one dissent below  
7 conceded that this is not primarily a legislative body exer-  
8 cising general governmental functions.

9 The United States has filed a brief here as amicus  
10 curiae and has stated in essence the basic function of the  
11 district is to supervise the operations of the program of two-  
12 year public education at the college level.

13 The Court below, in its Opinion stated: "We hold  
14 that the defendant is essentially an administrative body  
15 created by the legislature for the sole and special purpose of  
16 conducting a two-year college institution and that it is not a  
17 unit of local government having general governmental powers  
18 over the entire geographic area served by the body." Of course,  
19 that is the language that was used by this Court in Avery.

20 Its powers are circumscribed. The taxing power and  
21 bonding power -- it had no power to issue any bonds without the  
22 approval of two-thirds of the voters. It is under the super-  
23 vision of the state board of education by statute. The statute  
24 provides that the initiation for the development of the junior  
25 college must come from the people. The statute does not

1 organize any junior college; it merely sets forth a system  
2 whereby a junior college, a community, in effect, or metro-  
3 politan junior college may be formed.

4 The statute which is on Appendix 2-A of the brief  
5 of Appellees provides that the budgeting policies; the  
6 curriculum, the entrance requirements are all under the state  
7 board of education as are all of the junior colleges formed  
8 under this particular law.

9 The Missouri Supreme Court below has stated and I  
10 think it is very accurate, that this body had no power to do  
11 the multitude of things which a city or county may do under  
12 its broad delegation of powers and under its inherent powers.  
13 Its duties, its authorities, are essentially administrative  
14 and there certainly is language that has been used by this  
15 Court: its powers are not legislative in the classical sense;  
16 it doesn't pass laws; it doesn't pass the police powers; the  
17 government has acknowledged here that our situation is some-  
18 what atypical in that we are not the common type of elementary  
19 and secondary school district which is common throughout the  
20 United States.

21 Q How do its powers -- the powers that are in-  
22 volved in the school board that was involved in the Kramer  
23 case?

24 A I don't know that I can remember in detail  
25 there. As I recall there in Kramer they established a school

1 district which furnished education for the entire district --

2 Q And ran the schools.

3 A -- ran the schools and we run one junior  
4 college. It's a matter of degree, possibly, more than sub-  
5 stance. However, there is considerable difference in the  
6 impact on the community. We're not affected by compulsory  
7 attendance school laws; it's a voluntary program as far as  
8 entering the schools is concerned.

9 Q Is there something in the nature of a school  
10 or junior college district which would indicate that, say,  
11 10,000 people in the School District A ought to have a cer-  
12 tain vote in the junior college; that 10,000 people in another  
13 district should only have half that much influence, in the  
14 running of the junior college?

15 A I wouldn't know that -- I would not know of any  
16 such principle as that; no.

17 Q Well, what is the state's interest, then, in  
18 allocating the boards the way that this statute allocates it?

19 A I think the statute starts out, of course, and  
20 says first that the trustees shall be elected at large,  
21 except --

22 Q Except when?

23 A Except if one component school district has  
24 one-third, it elects two; except if it has half it elects  
25 three. So, I think there is --

1 Q I take it that at some point in that progression  
2 the same number of people in Kansas City won't have as much  
3 influence in running the junior college as the same number of  
4 people in the hinterlands?

5 A Well, that would not be -- there can't be --

6 Q I'm not saying that's invidious -- I'm just  
7 saying that's the fact, though.

8 A I would say that that would be a fact and it  
9 would have to be in any system where you are going to have  
10 bodies joined together in recognized boundary lines, you are  
11 going to have some of that -- some of that situation is going  
12 to exist. As you have pointed out, if you have 57 percent  
13 which we have now and we are going to have six trustees, we  
14 would have to elect three or four if we're going to have that  
15 system. And in doing -- whichever way we go we are going to  
16 have some disparity from perfection in apportionment.

17 Q You say there's really nothing but sort of an  
18 arithmetic necessity to do it this way, rather than -- you  
19 don't feel that there is anything inherent in running this  
20 school district that requires this kind of mal-adjustment, if  
21 I could call it that?

22 A I would disagree with you; the term "maladjust-  
23 ment" is --

24 Q Let's just say this particular method of  
25 distributing governing power.

1           A     Well, I don't think that it has to be this way.  
2 I don't think there is anything invidious or unreasonable  
3 about the formula.

4           Q     Do you think this kind of a formula is required  
5 or that it -- required to achieve a junior college district,  
6 or that it makes it more likely that there will be junior  
7 college districts?

8           A     Oh, I think very definitely.

9           Q     Why is that?

10          A     I think because it encourages -- particularly  
11 the outlying areas recognize that they will have some trustees

12          Q     More than their population would entitle them  
13 to?

14          A     Well, I hope that that would not be their  
15 motive; I don't think that -- I think, for example, that a  
16 larger district would recognize that if it had a third of the  
17 trustees then it would have two; whereas if it was in that  
18 large section it might not have any. I don't think that that  
19 large -- well, that large an election is in strict compliance  
20 with one-man, one-vote. It leaves much to be desired insofar  
21 as reasonable representation is concerned.

22          Q     I notice that your -- in forming the junior  
23 college district, the district is formed if a majority of all  
24 of the voters at large vote for a junior college district.

25          A     That is the way the law is established.

1 Q Not the majority in each district.

2 A That is correct; that is correct.

3 And I think, essentially the members of the board  
4 are selected to run the school and to act essentially in an  
5 administrative capacity and not as a representation of the  
6 constituents in the districts from which they are elected.

7 I think in the review that has been made here that  
8 it is quite clear that a junior college district is not a  
9 unit of local government that has general governmental powers  
10 over the entire geographic area served by the body. Now, that  
11 is the language that has been used by this Court in Avery,  
12 with respect to the Midland County Commissioners Court.

13 This junior college body is not a body having general  
14 governmental powers over an entire geographic area. Again,  
15 language used by this Court in Avery. It is not representa-  
16 tive of most general government bodies of American cities,  
17 counties, towns and villages, as was the Midland County  
18 Commissioners Court held to be in the Avery decision.

19 And I think with respect to some of our discussion  
20 as to population that we have entered into here in Sailors  
21 which involved a school board, there was a disparity of  
22 201,000 in one district to 99 in another; although conceivably  
23 while the local boards were elected, the county board was  
24 appointed.

25 In Avery there was a disparity of 67,414. In



1 Dusch versus Davis which was fairly recently decided, which  
2 had a residency requirement, there was a difference there of  
3 29,000 to 33.

4 Q What did you say the difference was here?

5 A Well, I don't -- at the present time in our  
6 district, though we don't have -- apportionment is based on  
7 school enumeration. We have 57 percent -- the district has, of  
8 the school enumerated persons in the entire district and we  
9 select three of the six trustees.

10 Q If this is held invalid, what can the legis-  
11 in this field;  
12 lature do /what could it substitute for this election process?

13 A I think that would be quite a problem, to  
14 substitute something that the legislature would be willing to  
15 pass. You could substitute an at-large through the entire --  
16 throughout the area which, of course, is what the legislature  
17 didn't want to do in the first instance. It could, of course,  
18 require there be six subdistricts of equal population, that's  
19 all. This certainly could be possible.

20 Q Well, Mr. Burrell, this law was passed, I  
21 suppose, before this Court decided the Virginia City case,  
22 the Virginia Beach case? Is this the status?

23 A That is correct.

24 Q And there is a formula for giving smaller  
25 districts -- guaranteeing smaller districts representation  
even if their population doesn't necessarily warrant it, and

1 one of the reasons for the decision was to facilitate con-  
2 solidation.

3 A That is correct.

4 Q And here, I suppose, you could -- even though  
5 all the trustees were elected at large there could be residence  
6 qualifications put on one, two or three of them?

7 A That is a possible -- that is a possible plan.  
8 Whether or not the legislature would feel that such a law was  
9 fair and it wouldn't encourage the development of the system  
10 as it has developed, is another question.

11 Q Thank you.

12 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Burrell.  
13 Mr. De Feo.

14 ORAL ARGUMENT BY LOUIS C. DE FEO, JR.,  
15 SPECIAL ATTORNEY TO THE ATTORNEY GENERAL  
16 OF MISSOURI, ON BEHALF OF APPELLEES

17 MR. CHIEF JUSTICE BURGER: It's beginning to emerge  
18 to us that we probably didn't need/as long a time as has been  
19 allotted to this case and we hope you would not use all your  
20 time and if your friend in rebuttal will have the same thing  
21 in mind, we will continue so you can get home tonight.

22 MR. DE FEO: I will endeavor to be as brief as  
23 possible.

24 I will direct my remarks to two factors: One, the  
25 justification for the component district system of election;

1 and secondly, that the junior college district that we are  
2 dealing with here is not a general governing body in the sense  
3 that it is discussed in Avery.

4 First of all, the legislative options, as I see them,  
5 in electing trustees for this junior college district, are  
6 three, possibly four as an alternative.

7 One: they could be elected at large; two: they  
8 could be elected from people arbitrarily drawn in election  
9 districts; and three: they could be elected from the component  
10 public school districts, as in fact, is the statute here.

11 Q If they were elected at large, of course there  
12 would be always the risk that they would all be elected from  
13 one end of the area; is it not possible?

14 A Yes, and in particular this question was brought  
15 out earlier and Counsel for the Appellants said that there was  
16 a slight chance of this happening. In fact, that I know that  
17 in the Kansas City Public School District where directors were  
18 formerly elected at large, and it is either four of the six or  
19 five of the six who come from the same high school attendance  
20 area.

21 So, this is what would happen, we feel, in an at-  
22 large election which justifies the legislature in not using  
23 that at-large method.

24 Further, I think the at-large method, although if  
25 you can't mathematically say one man's vote is equal to

1 another, dilutes minorities' effectiveness in the community.  
2 This is true of the Negro population; the rural population and  
3 maybe the inner city population. It could not, in many cases,  
4 as a practical matter, elect a trustee who represented their  
5 interests.

6 Even where there is a residence qualification it is  
7 oftimes the case that the persons elected are favorable to the  
8 majority grouping where they physically reside in one or  
9 another areas.

10 I think there is some distinction between the junior  
11 college district and the college school districts in general that  
12 must be made at the outset.

13 Public school directors have always been elected  
14 under at-large in Missouri, with one exception that was  
15 recently made. In comparison, junior college district direc-  
16 tors are elected from component school districts. Furthermore,  
17 which is even more critical, there is an overlapping of  
18 jurisdictions. I like to refer to this as a federation of --  
19 the junior college district as a federation. That's not  
20 strictly true but I think it reflects the essence of component  
21 public school districts joined together and forming a junior  
22 college district which is taking over a particular function  
23 which was formerly operated by the public school district that  
24 is a 13th and 14th year of education.

25 I think the component system is justified by the

1 history of junior college education in Missouri which has been  
2 touched on already here. Formerly this was handled by each  
3 public school district itself, and they have given up part  
4 of their function to turn it over to the junior college  
5 district. Moreover, they may, even under the present law,  
6 still continue to operate junior colleges -- each public  
7 school district.

8           Furthermore, the method of organization manifests  
9 this federation that I believe has already been discussed  
10 adequately and I'll pass on to the next point.

11           The system of component districts also promotes  
12 organization and I think this is probably one of the most  
13 important things as reflected by statistics that Mr. Burrell  
14 cited that its enrollment has gone from about 6 to about  
15 30,000 students.

16           Curriculum offerings, I don't have any statistics,  
17 but I know from representing the state board of education,  
18 have developed greatly by this method of providing junior  
19 college education.

20           Next, I would like to point, as a justification for  
21 the component district system that component school districts  
22 is an established community of interest; it is not an arbitrary  
23 election district, but it is set up only for the purpose of  
24 elections. The component school district is a public school  
25 district that educates children from five years to 16 years;

1 from kindergarten through senior high school.

2 The people in that district are accustomed to join  
3 in a concern for education; they are concerned about their  
4 high school graduates; they have developed communication  
5 channels for the purpose of providing education in the area.  
6 Therefore, it is almost a natural society; a natural unit  
7 that should be represented in the junior college district.  
8 And under the present method they can elect a trustee that  
9 reflects this community of interest.

10 Furthermore, the component school district system  
11 facilitates the administration of education. The school  
12 district boundary lines change very rapidly; much more  
13 rapidly than municipality boundary lines. School districts  
14 can change their boundaries in Missouri by annexation; by  
15 consolidation; by boundary change elections; by reorganization.  
16 These occur almost daily throughout the state.

17 Under the present component district system the  
18 boundaries of the school district and these component districts  
19 change simultaneously, they are always coincident. Further-  
20 more, there is economics and facility of administration in  
21 holding elections. Under the present component district system  
22 junior college trustees are elected at the same time as the  
23 other school trustees -- the component district trustees;  
24 thus, to avoid the necessity of two elections.

25 Now, if we had equally divided election districts,

1 rather than components, it would be necessary, in many areas  
2 to have separate elections for trustees because there is a  
3 difference between the time of election of different component  
4 school districts.

5 Furthermore, since both of these agencies, the  
6 component and the junior college, are supervised by the state  
7 board of education in curriculum and other manners, this  
8 facilitates state administration of education and preserving  
9 the component district system.

10 I think also the component district system is  
11 valuable because it makes the trustees directly responsible  
12 to a smaller area. It is a decentralization argument that  
13 is presented to you in the amicus brief of the Attorney  
14 General of New York. Also, it facilitates the urban-suburban  
15 rural alliance which has already been discussed, I believe, at  
16 length here.

17 I would like to move to my second point. That is  
18 that a junior college district as we are talking about here  
19 is not a general governing body as is discussed in the Avery  
20 case. Counties, cities, which have been held under the  
21 Equal Protection one-man one-vote rule have quasi-sovereignty.  
22 They have clearly identifiable units which reflect the three  
23 branches of our Anglo-Saxon Government: The Executive,  
24 Legislative and Judicial. They make laws; they enforce laws;  
25 they adjudicate.

1           Furthermore, and I think it is very critical here,  
2           general governing bodies -- cities and counties, have the  
3           police power. They license professions; they regulate  
4           businesses; they provide for the safety of the general public;  
5           provide for general health; they provide for general welfare;  
6           they also provide for numerous common services, like police  
7           protection and fire protection. None of these things does  
8           the junior college district of metropolitan Kansas City do.  
9           They are in business for one purpose: that is education.

10           I think the Junior College District of Kansas City  
11           is much more comparable to a private, incorporated college  
12           than it is to a general governing body. ~~If~~ we look at the  
13           enumerated powers that Mr. Achtenberg mentioned to the Court  
14           earlier; the junior college district can sue; so can a private  
15           college. The junior college district can issue bonds; so can  
16           a private corporation. The junior college district employ  
17           its teachers and other persons; so does a private college.  
18           The junior college districts hold title to control property;  
19           so does a private college. The junior college district  
20           governs pupils; so does a private college.

21           There are only two distinctions that I am able to  
22           find. The first is that the junior college district can tax  
23           and private colleges do not have the taxing power. But I --

24           Q       What about the comparison between this school  
25           board and the ordinary local school board from ages 6 to --



1 from the first grade through the 12th.

2 A So far as taxing powers?

3 Q No; as far as being a -- being subject to the  
4 one-man, one-vote.

5 A Well, my first premise would be that the rule  
6 does not apply to the normal public school district. It  
7 would apply directly to --

8 Q I see. You would make the same arguments with  
9 the normal school district?

10 A Yes. I think this is the same thing -- that  
11 these powers I have enumerated are the same as the public school  
12 district.

13 Q You were talking about their having a taxing  
14 power. Do they really have a taxing power? They can ask the  
15 voters to levy a tax, but that's merely a budget request;  
16 isn't it, in effect?

17 A Yes, in the sense that they can't do it  
18 arbitrarily themselves; they must rely on the electorate --

19 Q When the legislature levies taxes or other  
20 bodies do it, they don't have to ask the voters what they think  
21 of it; they levy it, don't they?

22 A Yes, under normal circumstances, unless it is  
23 a referendum or something.

24 Q This isn't true every year, that every time  
25 they tax every year that they go to the voters? The give --

1           A       Originally when they organized the voters  
2 authorize ten cents. Now, if they want to exceed that they  
3 have to hold an election and the Missouri Constitution pro-  
4 vides that if you get a certain percentage of the vote it's  
5 good for up to, I think, four years. If you just get a  
6 simple majority it's only good for one year, so you have to  
7 go back again for an additional amount.

8                   I would further add that a private college has  
9 almost the same powers in that they are -- that they often  
10 receive the benefit of Federal and state governmental money  
11 through assistance.

12                   And the only other power that I can find that is  
13 somewhat different is that the junior college district can  
14 control property, but this is true also of many quasi-public  
15 corporations: public utilities, railroads, telephone companies,  
16 et cetera.

17                   So, basically I find a junior college district much  
18 more akin to a private college than it is to a city or county  
19 or other general governing body.

20                   Therefore, I would conclude to say that the one-man,  
21 one-vote rule should not be extended to include this junior  
22 college district; that it is not a general governing body and  
23 it -- the term has been -- as I understand the term, as  
24 expressed the Court's present Opinions.

25                   But, further that Missouri and other states should

1 have the flexibility to innovate; to experiment; to find  
2 methods of education that are tailored to the local needs and  
3 the local circumstances, and this is what the component system  
4 is.

5 I thank you.

6 MR. CHIEF JUSTICE BURGER: Thank you, Mr. De Feo.

7 Mr. Achtenberg.

8 MR. ACHTENBERG: Mr. Chief Justice, and may it  
9 please the Court: We refuse to accept and we ask this Court  
10 not to accept any argument which says that people living in the  
11 suburbs have problems different in regard to schools,  
12 whether they be lower level schools or higher level schools;  
13 they have more problems than do the people in the cities such  
14 that this Court should justify a mathematical statutory  
15 formula which guarantees a weighted vote in favor of the  
16 suburbs.

17 Now, I'd like to repeat, if I --

18 Q What's done that --

19 A Sir?

20 Q Do you think that that's done now?

21 A Yes, sir. The statutory formula with which we  
22 are dealing, in effect, guarantees the small component district  
23 voters a weighted vote. The only situation, purely theoretical  
24 in which the both votes would be equal would be if the large  
25 component school district had exactly one vote or exactly 50

1 percent or exactly two-thirds. The minute it falls to one  
2 side or the other of that exact one vote it then becomes  
3 a prejudicial formula which moves in the direction of pre-  
4 judice of the large component school district. Because you  
5 start with a third and if you have exactly a third you get  
6 one-third of the votes. From one-third to a half you still  
7 get a third. You must proceed to the exactitude of a half  
8 to get what you are entitled to as half. And the minute you  
9 pass over that then you become again, discriminated against  
10 until you reach the exact mathematical point of two-thirds.

11 Now, noplac in the evidence and noplac in the  
12 arguments is any rational distinction given for the need to  
13 have such a weighted vote formula.

14 The argument was made and it was heard before in  
15 the legislative redistricting cases that the -- in that case  
16 it was the rural minority; in this case it's the suburban  
17 majority, needs protection. What we think should be said here  
18 is that all minorities need to have a vote in proportion to  
19 their voting strength. We say that this formula denies that.  
20 It favors one group, whether it be a minority or, in some  
21 situations, a majority; it gives that one group a vote  
22 weighted against its actual population strength.

23 Q What formula would avoid that?

24 A Sir?

25 Q What formula would avoid that?

1           A     Well, the Kansas City School system has been  
2 mentioned. The Kansas City School District, the component  
3 district involved here and it now has a formula which does  
4 avoid that; and it's relatively simple. It elects six  
5 trustees from sub-districts, or six directors, as they are  
6 called. And by the statute those districts must be of equal  
7 population and then it elects three at large. The proposal  
8 or rather the formula mentioned by Justice White in the Davis  
9 versus Dusch case is another formula which would give rep-  
10 resentation.

11           I say, frankly, that an at-large election would  
12 probably do the same thing because of the diverse, small-  
13 interest groups reacting in terms of --

14           Q     Did you say an at-large election?

15           A     Yes, sir.

16           Q     From where? Trustees to be from where?  
17 Anywhere in the whole district?

18           A     Well, I'm simply giving several alternatives.  
19 With the emotions developed in school district problems I  
20 think -- if we're thinking of wisdom rather than constitution-  
21 ality that perhaps either of the district elections from equal  
22 population districts or the Davis versus Dusch formula would  
23 be more responsive to the wishes -- more clearly express the  
24 wishes of the people in terms of school problems.

25           I think it should be clear that there are two issues

1 not presented in this case. We're not talking about whether  
2 or not this board may be appointed or elected. The statute  
3 of the legislature decided that this is a governmental body,  
4 affecting the public interest to the point they thought it  
5 should be an elective board. We simply don't have the  
6 question of Sailors.

7 Secondly, we don't have the question of a limited  
8 electorate as it was in Kramer, because here, again the  
9 legislature saw fit to have the vote by all qualified voters  
10 in the entire district.

11 Q Are these trustees paid officers or are they --

12 A I'm told not.

13 Q You are told that they are unpaid?

14 A Yes, sir.

15 Q And they are nonpartisan, I suppose, so far as  
16 party partisanship goes?

17 A That is correct; simply by petition without  
18 a party identification.

19 I'd like to conclude with our thinking in terms of  
20 the importance of schools and in that context a junior college  
21 has the same powers as any public school in Missouri; it has  
22 three campuses; it has all the myriad problems confronting  
23 schools today and I submit that schools involve more tensions,  
24 more strife and more controversy than the county court involved  
25 in Avery versus Midland. The statistics obligingly furnished

1 by the Solicitor-General in his brief in this case indicate  
2 that the school boards are the most numerous of all forms of  
3 local government. There are over 21,000 school districts in  
4 this country and they constitute more than one-fourth of all  
5 local governmental units and about 10 percent of those elect  
6 from districts. About one-half of all local governmental  
7 expenditures go for education.

8 Now, these are quantitative things, but it seems to  
9 me that in/<sup>a</sup>qualitative aspect, qualitative impact, of school  
10 operations; of public school operations aren't our governmental  
11 concerns; that in that respect that the concerns of citizens  
12 for the functioning of their schools is clearly a matter of  
13 governmental concern in which each voter's right should be  
14 weighed the same as every other voter's.

15 MR. CHIEF JUSTICE BURGER: Thank you.

16 Thank you for your submissions, gentlemen. The  
17 case is submitted.

18 (Whereupon, at 3:00 o'clock p.m. the argument in  
19 the above-entitled matter was concluded)  
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