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Supreme Court of the United States

OCTOBER TERM, 1969

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 Supreme Court, U. S.
 FEB 8 1970

In the Matter of:

----- X
 WILLIAM EVANS, ETC., ET AL., :
 :
 Appellants :
 :
 vs. :
 :
 TILLYE CORNMAN, ET AL., :
 :
 Appellees. :
 :
 ----- X

Docket No. 236

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Place Washington, D. C.

Date January 22, 1970

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

WILLIAM EVANS, ETC., ET AL.,)	
)	
Appellants)	
)	
vs)	NO. 236
)	
TILLYE CORNMAN, ET AL.,)	
)	
Appellees)	
)	

The above-entitled matter came on for argument at
11:12 o'clock a.m. on Thursday, January 22, 1970.

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

APPEARANCES:

ROBERT F. SWEENEY, ASSISTANT
ATTORNEY GENERAL OF MARYLAND
On behalf of Appellants

RICHARD SCHIFTER, ESQ.
1700 K Street, N.W.
Washington, D. C. 20006
On behalf of Appellees

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: Number 236, Evans against
Tillye Cornman and others.

Mr. Sweeney, you may proceed whenever you are ready.

ORAL ARGUMENT BY ROBERT F. SWEENEY,
DEPUTY ATTORNEY GENERAL OF MARYLAND

ON BEHALF OF APPELLANTS

MR. SWEENEY: Mr. Chief Justice, and may it please
the Court: It is not without some regret that the State of
Maryland arises this morning as the Appellant in this case,
because we are not without sympathy for the plight in which the
Appellees have found themselves. They are citizens of the
United States of America, they reside within the geographical
boundaries of the State of Maryland, they pay certain taxes to
the State of Maryland, and most understandably, they are
desirous of having the right to vote.

I might also say that were this a matter of personal
discretion for the Attorney General of Maryland, or for the
Governor of Maryland, with whom we have discussed this, we, out
of sympathy, would extend that right to vote to them.

But, we also submit to the court that in a government
of laws and not of men, that this question is one that should
not and cannot be decided out of sympathy for the Appellee's
position, but it is a question to which the laws of the United
States, the Constitution of the United States, and the laws of

1 Maryland must be applied, and a decision rendered after con-
2 sideration of those laws.

3 I further suggest to the Court that the opinion of
4 the District Court below, the District Court, which we believe
5 is one of the finest District Courts in the United States, not-
6 withstanding its occasional error, as in the instant case, that
7 the opinion of the District Court below was decided from an
8 overabundance of sympathy for the plaintiffs, and that that
9 opinion, we respectfully submit, is mistaken in fact, and
10 erroneous in law.

11 At the outset let me state that Appellants and
12 Appellees alike concede that the land in question here is that
13 over which the Government of the United States had exclusive
14 legislative jurisdiction. It was not the policy of the State
15 of Maryland, in ceding jurisdiction to the Federal Government
16 on any of the many Federal reservations scattered throughout
17 our state, to reserve to ourselves, concurrent jurisdiction,
18 except that reservation which has become almost standard, the
19 reservation as to serving process.

20 The question as to whether or not a resident of a
21 Federal enclave, over which the United States exercised exclu-
22 sive legislative jurisdiction, whether those individuals were
23 entitled to vote was considered by the Court of Appeals of
24 Maryland as recently as 1963, when some residents of the Perry
25 Point Naval Hospital in Cecil County in Maryland, applied for

1 the right to register, were refused that right and appealed to
2 the courts.

3 In the Court of Appeals' decision in that case, Royer
4 versus the Board of Elections Supervisors, the Maryland Court
5 of Appeals carefully considered the long line of cases in which
6 the courts throughout this nation have considered this same
7 question and after consideration of those cases, and after re-
8 view of what we believe to be the pertinent Federal Law on this
9 question, concluded that these individual residing on these
10 reservations, were not, in fact, residents of the State of
11 Maryland.

12 It appears to us from our study of the law that dating
13 from 1811 down to as recently as six months ago in New Mexico,
14 the courts throughout the United States have held that persons
15 residing on Federal reservations, over which there is exclusive
16 legislative jurisdiction vested in the Congress by virtue of
17 Article I, Section 8, Clause 17 of the Constitution, those
18 persons are not residents of the state. They do not have the
19 same political rights as do the residents of the state which
20 surrounds them, and that the sovereignty and the authority and
21 the dominion of those states, the states surrounding these
22 reservations does not exist over the individuals residing
23 therein.

24 In this long line of cases considered by the courts
25 throughout the country, there are but three representing a

1 minority view, or there were but three representing a minority
2 view, until the decision of the District Court. Two of those
3 three are not really applicable to the case at hand, because
4 one of those involved a state which had reserved to itself,
5 concurrent jurisdiction; another involved a state statute and
6 only one, the decision of the -- an intermediate Court of
7 Appeals in California, followed the line of reasoning which
8 was adopted by the District Court in this case.

9 May it please the Court: The arguments which we
10 present today would appear to be the first arguments addressed
11 to this Court on this specific question; on the question of
12 whether or not the residents of these enclaves must be granted
13 the right to vote. But the question itself, is not a question
14 of first impression to this Court; it is not a question of which
15 this Court has not taken notice on prior occasions, because the
16 Court in Surplus Trading in 1930 in holding that certain blankets
17 in the hands of a trader on a Federal reservation were not sub-
18 ject to state taxation.

19 This Court set out at great length in its opinion and
20 adopted, we believe, the language of some of the state courts
21 which had held, and quoted the language of the state courts
22 which it held that the residents of these Federal enclaves are
23 not entitled to vote, to be treated for voting purposes, like
24 the citizens of the state surrounding them.

25 The District Court decision on which we have appealed,

1 starts out by restating the premise that where the United
2 States exercises its exclusive legislative jurisdiction, over
3 land within a state, that the persons residing thereon, are
4 not residents, are not residents, and need not be granted the
5 vote.

6 Then, having, we believe, correctly stated below, the
7 court goes on to examine the so-called retrocessions statutes,
8 various statutes by which the Congress of the United States,
9 from 1928 on, has purportedly retroceded to the states certain
10 jurisdiction over the inhabitants of these reservations. And
11 the court, after a review of these statutes, then concludes
12 that the United States, in fact, having retroceded its jurisdic-
13 tion in what it says is all or substantially all of the impor-
14 tant matters of state sovereignty and authority, that this
15 jurisdiction is not exclusively Federal, but is concurrent
16 between the state and the Federal Government, and it being
17 concurrent, the state, the District Court said, is required to
18 extend that most precious right of all, it says, the right to
19 vote, to the Petitioners.

20 We submit, Your Honor, first of all, that an examina-
21 tion of these retrocession statutes will quickly reveal that
22 they do not retrocede to the State of Maryland or to any other
23 state, the all or substantially all of the state sovereignty
24 over these areas; nor do they give to the state concurrent
25 jurisdiction with the Federal Government in the important areas

1 of sovereignty.

2 What do they do? Quickly stated, one extends to the
3 residents of these enclaves, the benefits and the detriments of
4 the State of Maryland's wrongful death statute. Another extends
5 to them the benefits and the detriments of our workmen's compen-
6 sation laws, and of unemployment insurance laws. The two that
7 seem to be -- a third dealt with the right of the state to tax
8 the lessee's interest in commercial properties rented by the
9 Government to entrepreneurs within the reservation.

10 The two retrocession statutes that were --

11 Q How about state income, sales and gasoline
12 taxes?

13 A I was just about to say, Mr. Justice, that the
14 two that were of most interest to the District Court were the
15 Buck Act and the Lee Act, which gave to the states the right to
16 exact income and sales taxes. That's the Buck Act and the Lee
17 Act which gave the states the right to levy taxes on motor
18 fuels sold in the enclave.

19 These, obviously, were of great interest to the Dis-
20 trict Court and I submit to Your Honors, it is because of the
21 application of the Buck Act and the application of the Lee Act
22 that the District Court reached its conclusion.

23 The Buck Act gave to the State of Maryland the right
24 to levy certain taxes on the residents of these enclaves. It
25 gave the state the right to levy income taxes and it gave the

1 state the right to levy sales and use taxes.

2 Further, the District Court noted that although the
3 State of Maryland has absolutely no jurisdiction of any kind
4 to try one situated in a Federal reservation for any crime,
5 any criminal violation of the state law. The District Court
6 noted that the Congress had enacted as long ago as 1825 the
7 Assimilative Crimes Act and the court says that substantially
8 this means that the state criminal laws are enforced on the
9 reservation.

10 And it was really because of these, because we exact
11 income and sales taxes and because of the Assimilative Crimes
12 Act that I believe the District Court found that we had all or
13 substantially all of the sovereignty over these individuals,
14 as we do over residents of the state.

15 And it is in this, Mr. Justice, that we said that the
16 court has been mistaken in the facts.

17 First of all, I think this Court can take judicial
18 notice of the fact that the income taxes and sales taxes of any
19 state are levied for the purpose of providing the monies
20 which are used for such public projects as: highways, schools,
21 colleges, libraries and we believe that enacting the Buck Act
22 giving us the right to impose sales and income taxes on these
23 residents, the Congress of the United States was merely saying
24 to the State of Maryland and to the other states that "We
25 recognize that these individuals who are employed by us

1 within the geographical borders of your states, are utilizing
2 certain state services and we recognize the inequity of your
3 providing these services for them without any return on your
4 part."

5 And so we believe, Your Honors, that the passage of
6 the Buck Act was merely an exercise in Congressional equity,
7 giving to the state that to which the state was already en-
8 titled from the services which we supplied to the Appellees.

9 And I might also point out, as the District Court did
10 not, that when the Congress of the United States enacted the
11 Buck Act, they appended to that Act a phrase which said that
12 "Nothing contained herein shall be held to have surrendered the
13 exclusive legislative jurisdiction that the Congress of the
14 United States exercises under Article I, Section 8, over the
15 lands here in question."

16 I believe that this, may it please the Court, is
17 strongly persuasive of the fact that the District Court erred
18 when it held to the contrary.

19 Q May I ask you a question, Mr. Attorney General?

20 A Yes, Mr. Justice.

21 Q I suppose the foundation of this constitutional
22 challenge is the equal protection clause; isn't it?

23 A Yes, sir.

24 Q How would you describe the state interest, what
25 state interest is being served in making the distinction between

1 those on the enclave who are otherwise residents of the --

2 A The state interest that is --

3 Q -- what is the state interest?

4 A The state's interest in this cause is this --

5 Q You've got it under the law; you've got it on
6 your books, I know, but you have to defend it in terms of some
7 kind of a rational or under the equal protection --

8 A The simple fact that it is unjust and discrimin-
9 atory to the other citizens of Maryland, those who reside
10 within our geographical borders, but off the reservation. It
11 is unjust to them to extend, for us to extend the vote to
12 persons living on the reservation and for whom we have ab-
13 solutely no sovereignty; over whom we have absolutely no
14 authority and no dominion, excepting that authority and so
15 sovereignty granted to us which we hold at the sufferance of
16 another sovereign.

17 We can do absolutely nothing on this reservation and
18 that is the state interest in this question. Are we to be
19 required by the District Court or by the courts of the United
20 States, to give the right to vote to people who are completely
21 immune from a state criminal prosecution of any kind while on
22 the land on which they reside?

23 The Assimilative Crimes Act, my brother in his brief,
24 says, as the District Court, that substantially the same end is
25 achieved but the Federal Government, under the Act of 1825 and

1 as amended, will enforce on the reservation the laws of the
2 state, and we say that there is a material difference between
3 having the laws of the State of Maryland enforced on that
4 reservation by the United States Attorney. First of all it
5 means that the State of Maryland does not decide whom it shall
6 prosecute. A state prosecuting office does not decide, "Shall
7 I nolle prosequere this case; shall I stet it?"

8 Q And the State doesn't have to pay the expense
9 of a prosecution or a court or a jury or a prosecutor or a
10 policeman.

11 A Beyond question, but these are the burdens of
12 sovereignty --

13 Q As to the people themselves, not the Government,
14 but as to the residents, with the exception of not paying real
15 property taxes, what else is there that they don't have to do
16 for the state that every other citizen does?

17 A In the traditional phrase, "Thank you for asking
18 that question, Mr. Justice." We believe that an examination
19 of the laws of Maryland will reveal that there are substantial
20 burdens which are carried by the people of Maryland from which
21 the Appellees are exempted.

22 First of all, and this Court will know, as students of
23 the law, and as men versed in Government, that a substantial
24 body of law of every government is contained in the regulations
25 and rules of the governmental agencies, aside from that which

1 appears on the statute books.

2 The persons living on Federal reservations within the
3 State of Maryland are totally and completely exempt from the
4 regulatory authority of the 220 various agencies, boards and
5 commissions of State government and from an unknown number of
6 county governments in the county or municipal governments in
7 the county in which they are situated.

8 Now, are these mere words, or are these matters of
9 substance? Let me, if I may, point out several instances which
10 I believe will show that this is a question of substance.

11 MR. CHIEF JUSTICE BURGER: I think this is a good
12 point to terminate. We are going to take a recess until an
13 indefinite time after lunch.

14 MR. SWEENEY: Thank you, Your Honor.

15 (Whereupon, at 11:30 o'clock a.m. the argument in the
16 above-entitled matter was recessed to reconvene at an undefined
17 time this same day.)

1 (The argument in the above-entitled matter resumed at
2 2:00 o'clock p.m.)

3 FURTHER ARGUMENT BY ROBERT F. SWEENEY,

4 DEPUTY ATTORNEY GENERAL OF MARYLAND

5 ON BEHALF OF APPELLANTS

6 MR. SWEENEY: May it please the Court: Just prior to
7 the luncheon recess, Mr. Justice Marshall had asked me what
8 authority the state could not exercise on residents of govern-
9 ment enclaves.

10 Just to hit the highlights of some of that authority,
11 I mentioned that they are completely exempt from regulatory
12 authority over the 220-odd boards, agencies and commissions of
13 the state, of all similar county agencies, which means that
14 for example, the State of Maryland is completely without power
15 to enforce with the boundaries of the Federal enclave, the
16 liquor control statutes of the state or of the county.

17 The State of Maryland is completely without authority
18 to enforce within the confines of the enclave, such state
19 health department regulations as those which require compulsory
20 vaccination, obviously, of paramount concern to the health of
21 all in the vicinity, on or off the enclave.

22 The doctors who practice their profession at the
23 National Institute of Health and the attorneys who practice
24 there are free to do so without being required to subject them-
25 selves for licensing or examination by the State Board of

1 Medical Examiners, or by the State Board of Law Examiners, and
2 are not subject to the authority of the -- lawyers, for example,
3 not subject to the rules of procedure laid down by the Maryland
4 Court of Appeals.

5 Q Are there any lawyers on the enclave, practicing
6 law, just taking drop-in clients?

7 A I am aware of none, Mr. Justice.

8 Q They are all employees of the government, aren't
9 they?

10 A Yes, sir. And I mention these merely to show
11 that these are the areas over which we have no authority. We
12 have no dominion. Not that these specific instances operate
13 to the --

14 Q What if it were a crime to practice law without
15 a license in Maryland and someone on the Federal enclave was
16 permitted by the Federal Government to open a law office there
17 and engage in practice. Do you say that Maryland couldn't stop
18 him?

19 A I say this, Mr. Justice, that there is a total
20 absence of authority for the proposition that the Federal Govern-
21 ment may prosecute on the Federal reservation under the
22 Assimilative Crimes Act for violation of a state regulation,
23 even when that regulatory measure has criminal sanctions attached
24 to it.

25 So, in the instance that you gave perhaps it would fall

1 within the area of a substantial crime, but in the great
2 majority of regulatory measures, even though our statutes might
3 provide that violations of any of the regulations of the Health
4 Department or the Department of Natural Resources amounts to a
5 misdemeanor, if it is, in fact, a regulatory agency and I am
6 citing the Interdepartmental Report on the status of Federal
7 enclaves, there is absolutely no authority for the proposition
8 that the Federal Government may prosecute under the Assimilative
9 Crimes Act.

10 Q Because there are a lot of legislative acts of
11 the legislature in Maryland that have to be obeyed on the en-
12clave.

13 A You mean those -- yes, under the Act; under the
14 Crimes Act.

15 Q Yes. You do have some legislative authority
16 over the residents of the enclave?

17 A Beyond dispute, and I think I --

18 Q As a matter of fact, quite a few powers over the
19 residents, so that -- you say that the Federal Government has
20 exclusive jurisdiction even though they have ceded a good deal
21 of it back to the state. Do you say that because you think the
22 Federal Government can take it back?

23 A I think that, again, there is a question of law
24 to which there is no answer at this time.

25 Q But, assume they could take it back, nevertheless

1 at the present time the Federal Government is not exercising
2 exclusive legislative authority over the enclave.

3 A We say that they are, that the only --

4 Q How can it be exclusive if substantial blocks
5 of the Maryland laws apply to enclave residents?

6 A Because Article I, Section 8 says it's exclu-
7 sive, and that which we exercise, we exercise by virtue of the
8 Federal Congressional enactment. We are exercising their
9 powers and not our own. In that sense it is not concurrent.
10 So, it's a question of semantics. The powers that we exercise
11 are, as I say, by their sufferance.

12 Q But when you -- if Maryland passes or amends its
13 murder statute or its burglary statute or something else, that
14 applies to enclave residents?

15 A Oh, it does, under the Assimilative Crimes Act,
16 unless there is a similar Federal statute and if there is a
17 similar Federal statute, then that prevails, or unless the
18 State criminal statute is contrary to the public policy of the
19 United States.

20 Q And whenever you raise your sales tax, enclave
21 residents pay it?

22 A Yes, they do; yes, they do. But, again, as I
23 mentioned earlier, our position is that it is merely in return
24 for the services which we provide.

25 With the mention of sales taxes, let me make one --

1 Q How many voters are there?

2 A I'm sorry, sir.

3 Q How many voters in that enclave?

4 A In this particular enclave, perhaps my brother
5 can tell you, Mr. Justice, I --

6 Q Do you know about how many?

7 A Thirty-eight, my brother says.

8 Q Are there any other enclaves like that in
9 Maryland?

10 A Oh, yes, sir; there are many. Perry Point Naval
11 Hospital I mentioned earlier, and then there are military
12 establishments, the military residents of which are --

13 Q How is the state really being injured?

14 A I beg your pardon, sir?

15 Q How is the state really being injured. I'm
16 trying to see what this fight's really about.

17 A The state is being injured in that we are being
18 required to extend the vote in the State of Maryland to persons
19 living on an area over which we do not have sovereignty.

20 Q Is that the only theoretical injury?

21 A Yes, it is, and that is the only theoretical
22 injury, but I think it is more than theory. It's a basic and
23 fundamental --

24 Q Why is it more than theory?

25 A Because --

1 Q Do they trade over in Maryland, do you know?

2 A I would assume that they do.

3 Q Do they buy groceries and so forth?

4 A Well, in some cases yes, and on some fo the
5 military establishments, of course, they would buy from Post
6 Exchanges and also on the military base itself.

7 Q They live on the enclave as residents?

8 A They live on the enclave. Now, as to this
9 question of taxation, may it please the Court, and it is cer-
10 tainly the Buck Act which brought the District Court to its
11 conclusion in this case. Their theory being: "You would levy
12 income taxes on them and sales tax, that's substantially what
13 you take from other citizens; we're going to make you give them
14 this right."

15 And I say --

16 Q Can you collect income tax from them?

17 A Yes, sir.

18 Q Income tax and sales tax?

19 A Yes, sir; by virtue of the Buck Act.

20 Q I'm trying to figure out where really, Maryland
21 is injured. It seems to me like this is -- if I may be per-
22 mitted to say it -- is much ado about nothing.

23 A In numbers, yes. In principle, may it please the
24 Court, our position is that we're in substantially the same
25 position as if the District Court said to us, "You must give the

1 right to vote to aliens who are resident in Maryland and who
2 pay income tax.

3 Q Well, they are not quite like aliens, are they?

4 A I understand that; they are not, but they are
5 alien to Maryland by a long line of holdings of the state
6 courts and by approval of this Court or by citation of this
7 Court in Surplus and other case; they are alien to Maryland in
8 that they are not residents of Maryland.

9 Q I don't suppose you forbid them to trade in
10 Maryland.

11 A We do not.

12 Q Tell me, Mr. Sweeney, is the Buck Act something
13 that makes this Maryland Sales Tax Act Federal Law on the en-
14clave?

15 A No. What the Buck Act does is say to Maryland:
16 "You can collect taxes from them, " not all taxes, these
17 specific taxes. It concludes, as I mentioned earlier, by
18 saying "This is not to be taken as the determination of ex-
19clusive Federal jurisdiction therein."

20 Q I know, but -- I'm familiar with the idea that
21 you may have Federal Law, but what it is is borrowed state law.
22 What I'm trying to get at: are you arguing that all of these
23 Maryland laws that apply on the enclave, are really borrowed
24 Federal Laws?

25 A I'm saying that we exercise all of them only at

1 the sufferance of the Federal --

2 Q I take it you would be making the same argument
3 if the Federal Government said to you, "You may apply all of
4 your laws on this enclave, and you may collect property taxes."

5 A No, sir; I would not make the same argument.

6 Q Well, why not, it would still be exclusive
7 Federal jurisdiction.

8 A No, sir; I'm sorry. Our suggested solution to
9 this is the passage by the Congress of a bill such as was intro-
10 duced first under President Eisenhower and has been considered
11 by a succession of Congresses, which would retrocede to the
12 state all of the jurisdiction on these areas, all of it which
13 the Federal Government does not need for the specific purpose
14 for which they are utilizing these premises.

15 Then we say we will have concurrent jurisdiction; not
16 exclusive, but concurrent, and if it is, in fact, truly con-
17 current, then I think under the weight of the cases throughout
18 the United States, they would be entitled to the franchise.
19 But not here; not where we are not free to apply our administra-
20 tive laws; not where we are not free to elect for ourselves:
21 "Will we prosecute, or will we forebear prosecution?"

22 Let me, because I don't want you to forget -- I'm
23 sorry, sir --

24 Q How large is this enclave?

25 A Its size, I'm not --

1 Q The record says 317 acres.

2 A Thank you, Mr. Justice.

3 Q Are there people who are working on the enclave
4 who are residing outside of the enclave?

5 A Yes, sir.

6 Q And those people can vote?

7 A Beyond question. They are --

8 Q Is there any requirement with respect to those
9 living on the enclave, that requires them to live there if they
10 wish to vote. They could move out?

11 A I know of none, Mr. Justice. And it's a point
12 that I wanted to make. With all due respect to these indivi-
13 dual plaintiffs, they have opted to remove themselves from
14 Maryland's jurisdiction. They live there by their choice and
15 I --

16 Q I guess that's where they work and they give
17 them that building and they don't have to pay rent.

18 A Yes, sir; they have, I am sure, comfortable and
19 desirable quarters at reasonable levels, close to their place
20 of employment. The people who work at the next laboratory,
21 just next to them, however, and who don't have those same
22 quarters, live off the reservation and are subject to all of
23 Maryland's authority and to those we have freely given every
24 incidence of citizenship.

25 May I say a word about the question of property taxes.

1 Again, because the District Court and because this Court, ob-
2 viously is so interested in the question of taxation, that we
3 do not and cannot collect property taxes from these individuals
4 on this. Under no circumstances could we, assuming the
5 Federal Government retains title to it --

6 Q Well, there probably is no privately owned
7 real property, anyway?

8 A No, sir.

9 Q So, having the right to collect property taxes
10 wouldn't --

11 A I fully understand it, but the District Court
12 makes much of the fact that we collect income tax from these
13 residents and we collect sales tax from them and it says,
14 therefore, they pay their cost of government and they are in
15 substantially the same position as one who lives off the reser-
16 vation.

17 They even go on to cite in there that although they
18 don't pay the county taxes, which are primarily real estate
19 taxes, that the Federal Government to the impacted area school
20 assistance program, makes up the deficit through impacted area
21 funds.

22 I'd like the Court to --

23 MR. CHIEF JUSTICE BURGER: Counsel, your time is up.

24 MR. SWEENEY: Thank you very much.
25

1 MR. CHIEF JUSTICE BURGER: Mr. Schifter.

2 ORAL ARGUMENT BY RICHARD SCHIFTER, ESQ.

3 ON BEHALF OF APPELLEES

4 MR. SCHIFTER: Mr. Chief Justice, and may it please
5 the Court: The basic issue, as focused on very early in the
6 argument by Justice Harlan, is the contention of plaintiffs
7 that the action of the State of Maryland in classifying these
8 plaintiffs as nonresidents in the state, constitutes an arbi-
9 trary and unreasonable classification in violation of the
10 equal protection clause.

11 Q Is that the provision of the constitution you
12 are resting your case on?

13 A That's right.

14 Q Equal protection?

15 A Equal protection.

16 Q Something might turn on what test of equal
17 protection you use. If it's the conventional irrationality
18 test you might have more difficulty, wouldn't you? If it's the
19 compelling interest test, which the majority of this Court has
20 held flatly applies in voting cases, then your case becomes
21 stronger; doesn't it?

22 A I believe, Your Honor, that we can assert our
23 right from both tests.

24 Q You do?

25 A And in that connection I would like to point out

1 that it might be useful to focus on the specific facts surround-
2 ing the acquisition of exclusive jurisdiction by the United
3 States over the tract in issue here.

4 The tract with which we are dealing, is a tract lying
5 in Montgomery County to which the United States acquired title
6 in the 1930s and then built the National Institutes of Health
7 on it. Plaintiffs in this case moved onto the tract, in the
8 1940s, became registered voters, some around 1960 and still
9 later; others moved onto the tract in the 1950s.

10 It was only in 1953 that the legislature of the State
11 of Maryland ceded jurisdiction and thus created the exclusive
12 jurisdiction right of the United States to this area under the
13 Forts and Dockyards clause of the constitution.

14 Q When was that; 1940?

15 A 1953.

16 Q That's the first time it has occurred?

17 A That's right, Your Honor. What happened here was
18 that the United States first acquired title and only years
19 later, in 1953 did the State of Maryland cede jurisdiction and
20 thus vest in the United States, the exclusive jurisdiction
21 claimed under Clause 17, Article 6 --

22 Q Was there any objection raised by Maryland?

23 A No, they did not. The State of Maryland in
24 1953 ceded jurisdiction to this particular tract --

25 Q Voluntarily?

1 A Yes; voluntarily.

2 Q Do you think that the Congress of the United
3 States could pass a law permitting, giving these people the
4 right to vote in Federal elections?

5 A Yes, Your Honor; I believe the United States
6 could do that.

7 The contention of the state --

8 Q Why wouldn't that really be enough? If they
9 live on the enclave, why wouldn't that give them all they need
10 with reference to voting, if they got it from the government,
11 which has the enclave.

12 A Your Honor, the United States, however -- the
13 Congress of the United States has not done so and --

14 Q Well, they could, couldn't they?

15 A Oh, yes; they could.

16 Q Are you as clear about that as -- the reason I
17 asked the question is because I first thought that probably
18 there was no doubt about it, and then I started to think about
19 it and I'm not sure about it.

20 A Mr. Justice, as far as the House of Representa-
21 tives is concerned, I believe that this particular right could
22 be said to be vested in the Congress of the United States. This
23 would not be the case, perhaps, with regard to other offices.

24 Q That's not the case in the Senate?

25 A I would say it would be a more difficult issue

1 in that case. I think throughout the House of Representatives
2 it would be most clear.

3 Q You would not ask the Congress for the franchise
4 for these residents to vote in state elections?

5 A No; certainly not. And that, therefore, can
6 only be done by asserting their right under the 14th Amendment.

7 The position of the State of Maryland is basically
8 that we are dealing here with a geographic area which is not
9 part of the State of Maryland, the doctrine of extraterritor-
10 iality, which was first enunciated by the State Courts in the
11 19th Century, particularly by the Supreme Judicial Court of
12 Massachusetts in 1841 in the opinion of the justices, and
13 thereafter in Sinks versus Reese, 1869 by the Supreme Court of
14 Ohio.

15 It is very significant to note that in both instances
16 in the case of the decision of the Supreme Judicial Court of
17 Massachusetts, again the decision of the Supreme Court of Ohio
18 a great deal of emphasis was placed on the fact that the
19 residents of the enclave as they existed then had no obligations
20 whatever toward the states in question: Massachusetts and Ohio.
21 And both courts placed the thrust of the decisions of both of
22 these courts was that because there was no obligation owed by
23 an enclave resident to the state, it was for that reason that
24 there was no concurrence or no right arising out of it, to vote
25 in that particular state.

1 As the District Court, three-judge court in this
2 particular case, pointed out, the situation was abruptly
3 changed when the Federal Government in the late 1920s and
4 30s enacted a series of statutes which in effect, extended the
5 jurisdiction of the State of Maryland over the enclave and
6 enclave residents for practically all purposes, other than
7 criminal jurisdiction.

8 And this is really what we are down to. It is only
9 as far as the enforcement of the criminal laws are concerned,
10 that there is a continuing exclusive authority vested in the
11 United States Government. All the rest of it, in terms of the
12 daily lives of the residents of the enclaves, we are dealing
13 with people who are, in every other way, subject to the laws
14 and duties of citizens of Maryland.

15 Q How could they enforce a law with reference to
16 speeding in the enclave, for instance?

17 A It would have to be done, Mr. Justice, by the
18 -- in the United States courts, by the commissioners.

19 Q By what?

20 A By the United States Commissioners. In other
21 words, the speeding law would be enforced --

22 Q Well, what control does Maryland have over the
23 enclave and you said criminally; now, what does that include?

24 A Taxation, as far as all taxes to which these
25 people would be subject if they were not living on the enclave.

1 Q In other words, income tax?

2 A That's right; income tax, sales tax, motor
3 vehicle tax.

4 Q Well, you do have that much interest in election
5 of officers.

6 A That's right. As a matter of fact, Your Honor,
7 I wish to point out that what we are dealing with here is a
8 situation in which the plaintiffs are deprived of the right to
9 vote for all offices, from President of the United States on
10 down to local members of the board of education. And in each
11 of these offices, save one, these residents have a very deep
12 interest.

13 Q Do the records show how many children there are
14 resident in this enclave attending schools

15 A We have, Your Honor, the record only shows which
16 of the plaintiffs have children and that they did attend
17 schools.

18 Q What schools do they attend?

19 A The schools of Montgomery County, Maryland.

20 Q That gives them quite an interest in Montgomery
21 County.

22 A Yes; it certainly does.

23 Q Free schools; public schools?

24 A Yes; public schools in Montgomery County. The
25 record points out that quite a number of the plaintiffs are

1 members of the P.T.A. of Montgomery County, and that in every
2 other way they are a part of the Montgomery community.

3 I wish to point out that prior to 1953 the issue, as
4 to whether they are or are not members of the Montgomery County
5 community, could not even have been raised. It was simply that
6 the state law, ceding jurisdiction in 1953 simply drew a line
7 along Wisconsin Avenue and Old Georgetown Road, which said,
8 "From here on in there shall be no criminal jurisdiction by the
9 State of Maryland over this particular area."

10 Q When did this particular controversy come up and
11 how?

12 A It came up in 1968, Your Honor.

13 Q '68?

14 A Yes; and it developed in the --

15 Q And Maryland made no effort to prevent their
16 voting?

17 A That's right; until 1968.

18 Q Then how did it happen? Was there a state law
19 or anything like that?

20 A What happened was the following: In -- the
21 residents of another enclave in Cecil County, Maryland, had been
22 prevented by the Board of Supervisors of Elections of their
23 county from voting. They went into the Maryland courts and in
24 1963 the Maryland Court of Appeals in the Royer case, cited in
25 the brief, decided against them.

1 Q Decided against the people that wanted to vote?
2 What enclave was that?

3 A That was Perry Point Naval Hospital -- Veterans
4 Hospital at Perry Point in Cecil County.

5 Q How many voters there, I wonder.

6 A Probably a small number.

7 Q Not from the size of that installation; that's a
8 huge place.

9 A Two-hundred-and-fifty, I am told.

10 It took, Mr. Justice, about five years before the news
11 of the Royer case somehow got down to the Board of
12 Election Supervisors of Montgomery County and beginning early
13 in 1968 they decided to turn people down if they tried to
14 register to vote, from people who were residents of the NIH
15 enclave and in the months following, when the point --

16 Q I assume Maryland has not objected to their
17 paying taxes?

18 A No, it did not and it has been collecting taxes
19 all along.

20 Q Has there been any effort, political effort, in
21 the State Legislature, to get a state law giving these people
22 the right to vote?

23 A Yes, Mr. Justice, there has been and it has
24 failed. Also, it was proposed as a provision of the -- proposed
25 new constitution of the State of Maryland voted on in 1968 and

1 the proposed new constitution failed, too.

2 I would have to go outside the record, but I think I
3 have an idea as to why there was some difficulty as to why --

4 Q Difficulty as to what?

5 A As to why the legislation is not going through.

6 I believe the delegation of Ann Arundel County has
7 some doubts about military installations in that particular
8 county.

9 Q You mean they didn't want them?

10 A That's right; I believe that's the case.

11 Q They didn't want them voting.

12 A They didn't want the installation --

13 Q They wanted the military installations, but they
14 didn't want them voting.

15 A Yes. I do want to emphasize in this connection,
16 however, that --

17 Q Did I understand you to say they wanted the
18 installation but didn't want them to vote?

19 A That's right; we're dealing with, among other
20 things, the Naval Academy, Your Honor.

21 Q They didn't want it in Maryland?

22 A They would not want the residents of these
23 military installations to be voting in Anne Arundel County;
24 that is my understanding.

25 Q Has there ever been any objection to the

1 installations being there?

2 A I don't think so. I do want to emphasize --

3 Q I suppose the theory behind that is that they
4 are people without a permanent attachment to the State of
5 Maryland.

6 A Mr. Justice, the issue that I would like to
7 press home here, is that that is not the point that we are
8 making.

9 The State of Maryland retains the full power to define
10 residence in terms of the bona fideness of a particular person
11 living in a particular localtiy.

12 In the case of Annapolis, for example, the State of
13 Maryland could perfectlywell hold that a midshipman entering
14 the academy for four years is not a bona fide resident of
15 Maryland. However, a member of the faculty who has, plans to
16 spend his entire life there, and lives on the enclave, should
17 be considered a permanent resident of Maryland.

18 The same is true at Fort Meade. Somebody who is there
19 on a temporary tour of duty can be very well denied the right
20 to vote, but somebody who, again, is part of the permanent
21 cadre should have a right to vote inthe State of Maryland.

22 So, the distinction can still be made that the issue
23 that is raised here is whether a person living in a particular
24 locality and planning to live there for the rest of his life,
25 should be deprived forever of his right to vote as long as he

1 chooses to live at that particular locality, even though he
2 is paying taxes to the state and is, as the Court below pointed
3 out, also subject to the criminal laws of the state through
4 the Assimilated Crimes Act.

5 The only issue, the only point of distinction as I
6 mentioned before, is the point of distinction with regard to
7 the enforcement of the criminal laws.

8 And, to return to Mr. Justice Harlan's question, I
9 would say that if the state would provide that residents of the
10 enclave may not vote for State's Attorney of Montgomery County,
11 I would say that there would be a rational reason for depriving
12 them of that right to vote, because the State's Attorney of
13 Montgomery County, does, indeed, have no jurisdiction over the
14 enclave. But every other officer of government for whom these
15 residents may not vote under the theory of the state, is a
16 person in whom whose services they have a vital interest.

17 Q Now, I understand that the State's Attorney is
18 the only officer without, at least some, if not complete juris-
19 diction over these would-be voters. Why doesn't he, under the
20 Assimilated Crimes Act he does not?

21 A No; he does not.

22 Q I mean, if there is a robbery or a murder or a
23 rape or a criminal assault and battery the state substantive
24 law applies under the Assimilated Crimes Act.

25 A It does, but it is enforced by the U. S. Attorney

1 in Federal Courts.

2 Q In the Federal Courts; I see.

3 A This is why he is the only person that has no
4 jurisdiction at their place of residence.

5 Q I'm just wondering whether you're giving away
6 too much. Who enforces the income tax violations -- criminals?
7 If somebody in the enclave refuses to pay his taxes, state
8 taxes, who enforces that?

9 A I assume that this would be done, as far as the
10 civil action is concerned --

11 Q Criminal action -- is it a crime in Maryland not
12 to pay your income tax?

13 A I suppose it is a crime to falsify your return,
14 Mr. Justice. The enforcement, I would assume, would still be
15 vested in the U. S. Attorney.

16 I cannot find any way out of that. The State's
17 Attorney has no jurisdiction. The U. S. Attorney would have to
18 proceed in terms of enforcement of the criminal laws of the
19 state under the Assimilative Crimes Act.

20 Q Is the Naval Hospital, across the street, an
21 enclave?

22 A I assume it is, Mr. Justice.

23 Q The same problem there?

24 A I assume it would arise there. In the case of
25 military personnel --

1 Q Do you have many people living at --

2 A I assume we do not, and the point is that in the
3 case of military personnel, the issue arises much less because
4 they vote back home in their permanent place of residence. In
5 this particular case we are dealing with a group of people
6 who have made their home there for decades, and who plan to
7 stay there for good.

8 Q Well, I assume that's true over at the hospital.
9 A lot of them have stayed there for years.

10 Q But so they -- are there residences on the Naval
11 enclave?

12 A I beg your pardon, Mr. Justice?

13 Q Do they have residence for the permanent staff,
14 medical staff, on the enclave or do they live over in Mont-
15 gomery County?

16 A I'm not sure. I suppose they do.

17 Q There are a number of residences in the private
18 hospital, but I don't know whether the officers or the doctors
19 live there. I understand they live outside.

20 A I suppose some live there and others may live in
21 homes off the enclave.

22 With regard to the basic question of whether the
23 absence of criminal jurisdiction can deprive a voter, a
24 resident of a particular locality of the right to vote at his
25 place of residence, I would like to direct the attention of the

1 Court to the analogy in the cases involving the American
2 Indians who, though they live on Indian reservations, are --
3 and are not under the criminal jurisdiction of the states in
4 most instances, do have the right to vote under the various
5 decisions of the State Supreme Courts since 1948. We have
6 referred in our brief to the decisions in both Arizona and
7 Mexico on this particular question.

8 The issue in that instance is the same one that arises
9 here; that in the absence of criminal jurisdiction of the state
10 over the people living on the reservation, the right to vote
11 can, nevertheless, not be denied.

12 Q What if someone opens up a liquor store on the
13 enclave, without complying with Maryland's laws for running
14 retail liquor stores. Can those who enforce those laws, come
15 and seize the liquor? Perhaps the State's Attorney couldn't
16 prosecute, you say, but could they come on and close up the
17 store; padlock it and seize the liquor?

18 A I would assume, Mr. Justice, they cannot. They
19 would have to proceed through the United States Attorney.

20 Q Why would that be?

21 A I believe that this is inherent in the right of
22 -- in the fact that the United States starts out with exclusive
23 jurisdiction.

24 Q So you are saying, civilly, too, then, that
25 enforcement proceedings of any kind, of Maryland's laws, civil

1 or criminal, are in the hands of the United States Attorney?

2 A Civil proceedings, I would assume, could be
3 initiated in the Circuit Court of Montgomery County, Maryland.
4 Again, the violation --

5 Q Well, could they come and serve warrants?

6 A Yes; they can.

7 Q They can make arrests?

8 A Yes; since the very beginning of the experience
9 under the Forts and Dockyards clause and exceptions have always
10 been written into --

11 Q For subpoenas and thingslike that?

12 A Yes, sir; civil and criminal. This goes back
13 now to --

14 Q And serving summonses?

15 A Yes; all that can be done and has been -- that
16 was something that started way back in the early 19th Century.

17 Q But you couldn't come and take somebody's car
18 away because it hadn't been inspected or didn't have a license
19 on it; Maryland couldn't do that?

20 A No.

21 Q I understand from the Appellant's brief that
22 they can't serve on the jury?

23 A This, as I pointed out, Mr. Justice, is a
24 circular argument. The --

25 Q Is it a fact; I mean?

1 A May I just explain?

2 The new state law provides that jurors shall be drawn
3 from the list of registered voters.

4 Q I see.

5 A And if they are on the list then they will be --

6 Q And they can't be committed to a civil institu-
7 tion? Is that right? I gather that from the Appellant's
8 brief. They can't be committed.

9 A I suppose we are dealing, in that particular
10 situation, with a no-man's land. It may very well be true.

11 To sum up, may I point out that in terms of the real
12 factors involving people's lives on a day-to-day basis, we are
13 dealing here, fundamentally with the point that the residents
14 of enclaves pay the taxes that all other residents of Maryland
15 in similar situations pay and are subject to the same laws that
16 other residents of the State of Maryland are in terms of the
17 daily life that the average resident of any part of the United
18 States participates in.

19 The only opportunity that these people have to vote is
20 to vote as residents of the enclave. If they are deprived of
21 the opportunity of voting on the enclave, they are totally
22 deprived of the opportunity of voting anywhere.

23 MR. CHIEF JUSTICE BURGER: Thank you, Mr. Shifter.
24 Thank you for your submissions, gentlemen. The case is sub-
25 mitted.

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

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