

FILED

SID J. WHITE

MAR 11 1985

CLERK, SUPREME COURT

By [Signature]
Chief Deputy Clerk

IN THE FLORIDA SUPREME COURT

State of Florida,
Appellant/Defendant,

v.

Case No. 66,449

Frontier Acres Community
Development District,
Pasco County, Florida,

Appellee/Plaintiff.

_____ /

AMICUS BRIEF OF
THE ASSOCIATION OF SPECIAL DISTRICTS

TERRY E. LEWIS
STEVE LEWIS
ROBERT M. RHODES
Messer, Rhodes and Vickers
Post Office Box 1876
Tallahassee, Florida 32302

TABLE OF CONTENTS

	Page
Table of Citations	iii
Statement of the Case and Facts	1
Summary of the Argument	2
Argument	3
CHAPTER 190, FLORIDA STATUTES (1983 AND 1984 SUPP.) DOES NOT VIOLATE THE EQUAL PROTECTION REQUIREMENT OF ONE-PERSON, ONE-VOTE BECAUSE THE PURPOSE OF A COMMUNITY DEVELOPMENT DISTRICT IS SPECIALIZED AND NARROW AND DISTRICT FUNCTIONS BEAR ON LANDOWNERS SO DISPROPORTIONATELY AS TO DISTINGUISH COMMUNITY DEVELOPMENT DISTRICTS FROM PUBLIC ENTITIES WITH MORE GENERAL GOVERNMENT FUNCTIONS.	
A. Chapter 190	
1. The Legislative Purpose	
2. The Legislative Substance	
B. Case Law	
1. Narrow Purpose	
2. Relationship of District Functions to Landowners	
C. Public Policy	
Certificate of Service	17

TABLE OF CITATIONS

	Page
<u>CASES</u>	
<u>Avery v. Midland</u> , 390 U.S. 474, 88 S.Ct. 1114, 20 L.Ed. 2d 45, (1968).	6,7
<u>Ball v. James</u> , 451 U.S. 355, 101 S.Ct. 1811, 68 L.Ed. 2d 150 (1981).	7,8,9,10, 11,12,13,16
<u>Cipreano v. Houma</u> , 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed. 2d 647 (1969).	7
<u>City of Phoenix, Arizona v. Kolodziejcki</u> , 399 U.S. 204, 90 S.Ct. 1990, 26 L.Ed. 2d 523 (1970).	7
<u>Hill v. Stone</u> , 421 U.S. 289, 95 S.Ct. 1637, 44 L.Ed. 2d 172 (1975).	7
<u>Reynolds v. Sims</u> , 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed. 2d 506 (1964).	6,7,8,10,13,14
<u>Salyer Land Company v. Tulare Lake Basin Water Storage District</u> , 410 U.S. 719, 93 S.Ct. 1224, 35 L.Ed. 2d 659 (1973).	7,8,9,11,12,16
<u>FLORIDA STATUTES</u>	
Chapter 190 (1983 and 1984 Supp.)	2,3,4,6,9,10, 11,12,13,14,16
Section 190.001	9
Section 190.002(1)(a)	4
Section 190.002(2)(3)	4
Section 190.004(3)	4
Section 190.006	10,11
Section 190.006(2)	3
Section 190.006(3)	5
Section 190.012	4,5
Section 190.016	5
Section 190.025	12

STATEMENT OF CASE AND FACTS

Amicus adopts Appellee's Statements of the Case and Facts.

Unless otherwise noted, all emphasis is supplied by the authors.

SUMMARY OF THE ARGUMENT

Chapter 190, Florida Statutes, does not violate the Florida or United States Constitutions' Equal Protection Clause requirement of one-person, one-vote, because the purpose of a Community Development District is sufficiently narrow and district activities bear on district landowners so disproportionately as to distinguish district functions from general governmental functions. The public purpose of Chapter 190, Florida Statutes, is to provide a means of economically financing, building and maintaining community infrastructure to accommodate future growth without burdening general purpose local government and its taxpayers. District landowners receive the infrastructure benefit and are obligated to bear the concomitant costs. Moreover, the district implementation scheme subordinates district operations to all applicable state and local land development, zoning and general police power laws and incorporates sufficient procedural safeguards to institute the one-person, one-vote right once it is required.

ARGUMENT

CHAPTER 190, FLORIDA STATUTES (1983 AND 1984 SUPP.) DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE REQUIREMENT OF ONE-PERSON, ONE-VOTE BECAUSE THE PURPOSE OF A COMMUNITY DEVELOPMENT DISTRICT IS SPECIALIZED AND NARROW AND DISTRICT FUNCTIONS BEAR ON LANDOWNERS SO DISPROPORTIONATELY AS TO DISTINGUISH COMMUNITY DEVELOPMENT DISTRICTS FROM PUBLIC ENTITIES WITH MORE GENERAL GOVERNMENT FUNCTIONS.

Appellant argues Chapter 190, Florida Statutes, is unconstitutional in that Section 190.006(2), Florida Statutes, initially provides for election of the Board of Supervisors of a community development district (CDD) by district landowners on a one vote per acre basis rather than one vote per person. Amicus believes Chapter 190, Florida Statutes, does not violate the one-person, one-vote principle because the purpose of a CDD is extremely limited, narrow and the costs of and benefits derived from CDD creation and operation fall disproportionately on district landowners. The legislative purpose and substantive provisions of Chapter 190, Florida Statutes, pertinent case law and practical policy consideration strongly support Amicus' position.

A. Chapter 190, Florida Statutes

1. The Legislative Purpose

When enacting Chapter 190, Florida Statutes, the Legislature found a specific, limited need to create a CDD financing mechanism, to provide basic community services to raw, sparsely populated land in a timely, efficient, and economic manner. The sole legislative purpose of Chapter 190 is to address the state's

concern for community infrastructure and serve projected population growth without financial or administrative burden to existing, general purpose local government and taxpayers. §190.002(1)(a), Fla. Stat. (1983 and 1984 Supp.). The Legislature further provided that the functions exercised by a CDD are subordinated to and must comply with all applicable state and local governmental law, including planning and permitting of the development to be serviced by the CDD. Specifically CDD's do not have zoning, permitting or other traditional police powers of local government with regard to actual land development. §190.002(2)(3), 190.004(3), and 190.012, Fla. Stat.

In conclusion, the clear Chapter 190 legislative purpose is to create a practical financing mechanism for the narrow objective of providing community infrastructure needs in the most timely, cost efficient manner possible. This single, narrow legislative purpose insures future growth will have adequate community infrastructure provided in a manner compatible with all state and local land use regulations.

2. The Legislative Substance

To specifically protect the one-person, one-vote principle, Chapter 190, Florida Statutes, does contemplate a broadened franchise at any time a CDD takes on expanded responsibility. In the event a board of supervisors proposes to exercise ad valorem taxing powers, Chapter 190 requires an election of the board by qualified electors of the district. And, regardless whether a district ever proposes ad valorem taxes, there must

be an election of board members by electors of the district within six years of district creation. §190.006(3), Fla. Stat.

Chapter 190 provides a district has and a board of supervisors may exercise a specific number of narrow powers. §190.012 and 190.016, Fla. Stat. These powers do include taxation and the sale of bonds for planning, construction and maintenance of such facilities as roads, water supply systems, sewers and recreational structures.

However, implementation of these powers is not automatic with district creation. Use of individual powers is optional with the board and always subject to state and local regulations. The powers contained in Sections 190.012 and 190.016, Florida Statutes, are of no force and effect until a board chooses to use them and then, as in Appellee Frontier's situation, only for the narrow purpose of financing construction and maintenance of infrastructure. There is therefore no general constitutional flaw in the organizational or electoral scheme for creation and operation of a CDD. Any one-person, one-vote requirement for a CDD necessarily depends upon the CDD board's choice of operational alternatives and district powers to be utilized.

In particular, Frontier has opted to exercise a minimum number of infrastructure powers and should be exempt from the one-person, one-vote requirement. Further, the narrowness of CDD purpose with the protected franchise upon implementation of ad valorem taxes or in six years amounts to an acceptable statutory framework to allow one vote per acre during the organiza-

tional period when the district is not populated and landowners have the only tangible interest in the development.

Thus, the purpose of Chapter 190 is to provide a fiscal implementation device for development which will work in concert with local and state government to ensure cost effective installation of infrastructure which can be maintained for future growth. The Legislature did include strict, constitutionally acceptable safeguards in Chapter 190, Florida Statutes, by ensuring CDD's are consistent with and subordinated to local and state government regulations and requiring a timely mandatory transition, to a one-person, one-vote government immediately upon district assessment of ad valorem taxes or within six years of creation.

B. Case Law

1. Narrow Purpose

Appellant relies upon various cases as partial analogs in support of her contention CDD election procedures violate the one-person, one-vote principle required by the Equal Protection Clause. These cases are inapposite or actually support the constitutionality of CDD election procedures.

Appellant initiates her argument with the landmark case of Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12th L.Ed., 2nd 506 (1964), which set out the one-person, one-vote principle for bicameral legislatures. This case is not germane other than for historical purposes since the boards of supervisors of CDD's, unlike a legislature, are not granted broad discretionary police powers for public health, safety, and welfare.

Appellant also relies upon Avery v. Midland, 390 U.S. 474, 88 S.Ct. 1114, 20 L.Ed. 2d 45, (1968), which extended the one-man, one-vote principle to other state political subdivisions four years later by requiring no substantial variation from equal population in defining county commission districts. Like Reynolds, Avery relates to governments which are granted broad discretionary police powers.

Appellant then buttresses her argument by referring to several cases immediately following Avery which hold bond financing of certain types of capital structures require the approval of all electors whether they are landowners or not. Cipreano v. Houma, 395 U.S. 701, 89 S.Ct. 1897, 23 L.Ed. 2d 647 (1969); City of Phoenix, Arizona v. Kolodziejcki, 399 U.S. 204, 90 S.Ct. 1990, 26 L.Ed. 2d 523 (1970); and Hill v. Stone, 421 U.S. 289, 95 S.Ct. 1637, 44 L.Ed. 2d 172 (1975). However, cases cited by Appellant again involve governments with broad discretionary police powers and relate to referenda directly impacting thousands of local residents. The powers of a CDD are narrow and there are usually no or very few residents affected at the time of an initial election.

Finally, Appellant admits there is an exception to the one-person, one-vote principle for special purpose districts as set down by Salyer Land Company v. Tulare Lake Basin Water Storage District, 410 U.S. 719, 93 S.Ct. 1224, 35 L.Ed. 2d 659 (1973), and clarified and enlarged by Ball v. James, 451 U.S. 355, 101 S.Ct. 1811, 68 L.Ed. 2d 150 (1983).

In Salyer the Court held that a California statute allowing a voting scheme of one-acre, one-vote for the election of a board of directors of a water storage district did not violate the Equal Protection Clause. Salyer at 1229, 1230. The Court stated under the facts and circumstances the law did not violate the Equal Protection Clause because of the narrow purpose of the law and its disproportionate effect on landowners. Salyer at 1228, 1229.

The most recent case, Ball v. James, involved the Salt River Project Agricultural Improvement and Power District, a government entity which stores/delivers water to residents within a large urban/agricultural district and subsidizes its water operations by selling electricity to hundreds of thousands of residents in Arizona. Under state law, election of district directors is limited to landowners. Nonlandowners claimed the district's governmental powers of condemnation, bond sales, electricity sales to half of the state and flood control with concomitant impacts on the environment substantially affected all residents regardless of property. The limited franchise was therefore a violation of the one-person, one-vote principle.

In viewing the multiplicity of powers exercised by the district, the Court noted it was possible in certain cases that elected functionaries whose duties are removed from normal government activities and disproportionately affect certain groups need not comply with Reynolds requirements. Ball at 1817. The Court then explained that Salyer held statutorily created water storage

districts with a one-acre, one-vote scheme were constitutional because the districts had relatively limited authority, the primary purpose was to develop and operate a water distribution system for the landowners and the landowners disproportionately bear the cost. Ball at 1817.

The Court then recognized the factual differences between the Tulare Lake Basin Water Storage District in Salyer and the Salt River District in Ball whereby the latter sold power to over half the population of Arizona and used those revenues to fund virtually all capital and operating costs including the servicing of bonds. The Court concluded these distinctions did not amount to a constitutional difference and upheld the one-acre, one-vote electoral scheme.

The Court explained that although the Court of Appeal below had characterized the district duties as broad, the lower Court should have looked at the primary and originating purposes of the district which were relatively narrow. Ball at 1819.

Like the statutes which created the water control districts in Salyer and Ball the primary purpose of Chapter 190 is a single, limited narrow objective to create a financing mechanism for interim funding and maintenance of urban infrastructure needed for future development. §190.001, Fla. Stat. Just as there is infrastructure need for proposed agricultural development such as canals, roads, pumping stations and electricity, there is infrastructure need such as roads, water and sewer for proposed residential development. The Chapter 190, Florida Statutes,

entity is precisely the type of single purpose district government operated on a one-acre, one-vote principle validated by Salyer and Ball. Therefore, both Chapter 190, Florida Statutes, and Frontier's intended use of the statute should receive constitutional approval. Further, the Ball court stated the Salt River District simply did not exercise the sort of governmental powers that invoke the strict demands of Reynolds v. Sims, since the District did not impose ad valorem property taxes, sales taxes, adopt laws governing the conduct of citizens or administer such normal functions of government as maintaining streets, the operations of schools, or sanitary health and welfare services. Ball at 1818. A CDD cannot impose sales taxes or enact laws governing citizens' conduct. Should it choose to impose ad valorem taxes, it must hold an election of all qualified electors. §190.006, Fla. Stat.

CDD's cannot therefore exercise broad discretionary police powers. They may only exercise proprietary functions for the narrow purpose of planning, constructing and maintaining infrastructure for future growth. Even for this narrow purpose there are safeguards to ensure compliance with all state/local regulations and to protect the franchise. This narrow purpose is exactly what Ball deems permissible.

Per Ball Appellant argues per Ball Appellee, Frontier, will provide utilities and municipal improvements and therefore fails to qualify as a special purpose district. The Ball language is dicta and provides only examples of an array of governmental

functions, which, if exercised together, may trigger the one-person, one-vote principle.

In fact, the district in Ball provided both utilities and municipal improvements in equivalent or greater magnitude than the CDD here in question. Unlike Ball which had no one-man, one-vote, provision, the scheme mandated by Chapter 190, Florida Statutes, will allow Appellee, Frontier, to control the supervisory board only during an interim period of initial construction and maintenance of infrastructure. The CDD electoral mechanism therefore actually places a lesser strain on equal protection than the district in Ball.

Practically, the first phase of the infrastructure in Frontier Acres will not be completed for approximately two years. During that time there will be no CDD residents. Common sense dictates there can be no vote without voters. But, before the last phase is completed (approximately eight years), a board, elected by all qualified electors, will have served the district for two years. §190.006, Fla. Stat.

The functions to be performed by a CDD are intended to be proprietary in nature. The functions are not the broad police powers of government. Once infrastructure is built, someone must maintain and operate improvements until electors are present to participate in district governance. This is a critical distinguishing factor between factual circumstances in cases cited by Appellant and facts generally applicable to CDD's and Frontier particularly. Case law relied upon by Appellant involved circum-

stances where there were residents at the time of election. There is no one to vote, thus, the circumstances and the interim financing structure set forth in Chapter 190 do not result in the normal administration of governmental functions.

There is a clear trend in the Salyer and Ball cases which recognizes there must be a liberalization of the one-person, one-vote principle under certain circumstances. The close examination of the most recent case law clearly establishes the creation of CDD's pursuant to Chapter 190, Florida Statutes, does not violate the Equal Protection Clause. The scheme set forth in Chapter 190 is a logical extension of Salyer which recognized the power of a district to contract and staff projects. Salyer at 1230. This power is reaffirmed by Ball and should be approved in this case. Ball at 1818.

2. Relationship of District Functions to Landowners

The conclusion that creation of a CDD pursuant to Chapter 190, Florida Statutes, is not in violation of the one-person, one-vote principle is further buttressed by the second point raised in Salyer and addressed by Ball. That is, the disproportionate relationship the district functions bear to the specific class of people whom the system makes eligible to vote. The Court in Ball states voting landowners are the only residents of the district whose land is subject to liens to secure district bonds. Ball at 1820 and 1821. The same holds true for the landowners within a CDD. §190.025, Fla.Stat. Thus, per Ball a CDD's activities do bear on CDD landowners disproportionately

because the landowner receive benefits of the district and is required to pay for those benefits.

It is true with CDD's generally and Frontier specifically that once the first phase has been completed there will be other residents besides the landowners. But, the Ball Court made it clear that Salyer did not say that a selected class of voters for a special public entity must be the only parties at all affected by the operations of the activity. Ball at 1821.

Certainly rental rates will reflect and assist in defraying part of the assessments made against the landowner; however, for several years such assistance will be de minimis and any fees will certainly have to contend with the pressures of the free market which will keep them reasonable. Moreover, the landowners' property will always be subject to liens to secure the bonds. Parenthetically it should also be recognized that the landowner will also be paying local government ad valorem taxes which to some extent will also be reflected in rental fees. Thus, considering how a CDD is financed and who is liable, the effect of the entity's operation on the landowner is disproportionately greater than the effect on those who might seek to vote. Ball at 1921.

The final point addressed by Ball which is also relevant to this case was the issue of whether selling power to half the population of Arizona triggered the Reynolds standard. The Court concluded that it did not and said:

"The sole legislative reason for making the water projects public entities was to enable them to raise revenue through interest-free bonds, and that the development and sale of electric power was undertaken not for the primary purpose of providing electricity to the public but to support the primary irrigation functions by supplying power for reclamation uses and by providing revenues which could be applied to increase the amount and reduce the cost of water to the Association's subscribed lands." Ball at 1820.

The same is true for CDD's created pursuant to Chapter 190, Florida Statutes. The sole purpose is to enable CDD's to raise revenues through taxes, assessments and interest-free bonds so infrastructure can be timely put in place and maintained for future growth at the least cost with no burden to other governments and their taxpayers. Thus, the purpose of Chapter 190, Florida Statutes, is sufficiently narrow to not invoke the Reynolds standard.

C. Public Policy

There are several public policy reasons for finding CDD's created pursuant to Chapter 190, Florida Statutes, constitutional.

First, CDD's provide another viable method for financing infrastructure needed for future growth. Florida's population is growing at a tremendous pace and it will continue. Moreover, it is apparent local government through its ad valorem taxing powers has not been able to keep pace with community infrastructure demand. The CDD alternative will as an adjunct to local general purpose government financing provide infrastructure in a timely and economic manner which benefits all residents of the state

of Florida. Moreover, the public is ensured new growth pays for itself and is not subsidized by taxpayers outside the district.

Second, a CDD provides a powerful centralized management structure to ensure that the infrastructure is constructed and maintained. Local governments cannot always guarantee that infrastructure will be provided at all or in a timely or efficient manner. Alternative mechanisms such as homeowner associations simply do not possess the power to ensure infrastructure will be properly maintained. Thus, CDD's are an ideal mechanism to ensure that infrastructure is not only timely built, but is maintained for its useful life.

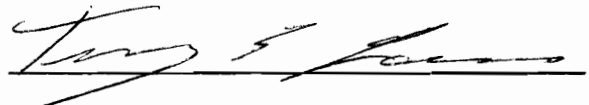
Finally, as a practical matter, the Court must recognize that during the initial formation of a CDD that there are no residents to be disenfranchised. The vehicle for creation of high quality community improvements, maintained in perpetuity must be set in place at the inception of a development, not as an afterthought or stopgap measure once development occurs and residents arrive. The only logical method to ensure such improvements is through creation and operation of a mechanism such as a CDD. And, during the early, formative stages of each development, a governance system bottomed on a landowner franchise does not afford the constitutional one-person, one-vote principle.

CONCLUSION

The Court below did not err in validating the bond issue to finance the construction of infrastructure pursuant to the mechanisms set forth in Chapter 190, Florida Statutes. Chapter 190, Florida Statutes, is not unconstitutional because the purpose of Chapter 190 is sufficiently narrow and the activities bear on the landowner so disproportionately as to distinguish it from a local government. The public purpose of Chapter 190, Florida Statutes, provides an economical means of financing, building and maintaining infrastructure to accommodate future growth without burdening local government and its taxpayers. Moreover, the implementation scheme set forth in Chapter 190 requires compliance with all state and local laws and also provides sufficient safeguards to protect the one-person, one-vote right once there is a need to protect it. Considering the circumstances, Chapter 190, Florida Statutes, falls within the exceptions to the one-person, one-vote principle forth in Salyer and reaffirmed in Ball.

Respectfully submitted,

TERRY E. LEWIS
STEVE LEWIS
ROBERT M. RHODES
Messer, Rhodes and Vickers
Post Office Box 1876
Tallahassee, Florida 32302



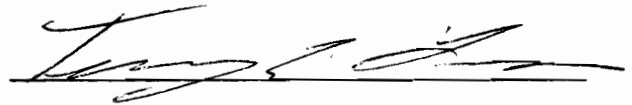
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of the foregoing Amicus Curiae Brief of the Association of Special Districts have been served by U. S. Mail this 11th day of March, 1985, to the following persons:

C. MARIE KING
Assistant State Attorney
Post Office Box 5028
Clearwater, Florida 33518

ROBERT L. WILLIAMS
Suite B, 2100 S. Tamiami Trail
Venice, Florida 33595

KEN VAN ASSENDERP
Young, van Assenderp, Varnado & Benton
Gallie's Hall
225 S. Adams Street
Tallahassee, Florida 32302



/c/frontier/9