To be argued by
JEFFREY E. STOCKHOLM

Estimated Time: 10 minutes

NEW YORK SUPREME COURT
APPELLATE DIVISION : THIRD DEPARTMENT

'82

In the Matter of JOHN ESLER, DANIEL E. GAFFNEY and MARY T. SMITH,

Petitioners-Respondents,

-against-

CARL J. WALTERS, SUPERVISOR OF THE TOWN OF GUILDERLAND, DONALD CROPSEY, JOHN RYAN, VIRGINIA HORAN and JOHN SMIRCICH, MEMBERS OF AND CONSTITUTING THE TOWN BOARD OF THE TOWN OF GUILDERLAND, JANE SPRINGER, THE TOWN CLERK OF THE TOWN OF GUILDERLAND, AND DENNIS TYSON, CHIEF ENGINEER OF THE TOWN OF GUILDERLAND WATER AND WATER WASTE MANAGEMENT COMMISSION,

Respondents-Appellants.

PETITIONERS-RESPONDENTS BRIEF

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JEFFREY E. STOCKHOLM

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STATE OF NEW YORK

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STATEMENT UNDER CPLR RULE 5531

1. The Index Number of the case in the Court below is 11300-80.

2. The full names of the original parties are: John Esler, Daniel E. Gaffney and Mary T. Smith, Plaintiffs, and Carl J. Walters, Supervisor of the Town of Guilderland, Donald Cropsey, John Ryan, Virginia Horan and John Smircich, Members of and Constituting the Town Board of the Town of Guilderland, Jane Springer, the Town Clerk of the Town of Guilderland, and Dennis Tyson, Chief Engineer of the Town of Guilderland Water and Waste Water Management Commission, Defendants. There have been no changes in the parties.

STATEMENT UNDER CPLR RULE 5531

3. The action was commenced in the Supreme Court in the County of Albany.

4. The action was commenced by service of an Order to Show Cause, Petition, and supporting exhibits upon the Officers of the Clerk of the Town of Guilderland, John W. Tabner, Esq., attorney for the Town Board of the Town of Guilderland, and the Attorney General of the State of New York on September 23, 1980. The respondents served their Verified Answer with supporting exhibits on October 15, 1980.

5. The nature and object of the action is to declare Section 206, (7) of the Town Law of the State of New York unconstitutional, thereby annulling the previously held special election for the consolidation of the Westmere and McKownville Water Districts. This appeal is from a judgment signed and entered in the office of the Albany County Clerk of December 31, 1980, which judgment granted the relief demanded in the Petition. Entry of the judgment was directed by the decision of the Honorable John H. Pennock, Justice of the Supreme Court, dated December 29, 1980. Initially, appeal of the judgment was taken to the New York State Court of Appeals, which by order transferred the same, without costs, sua sponte, to the Appellate Division, Third Department, upon the ground that a direct appeal does not lie where questions other than the constitutional validity of a statutory provision are involved.

6. This appeal is prosecuted on a full reproduced record.

NEW YORK SUPREME COURT
APPELLATE DIVISION : THIRD DEPARTMENT

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Respondents-Appellants.

PETITIONERS-RESPONDENTS BRIEF

Statement

This is an appeal by the Town of Guilderland from a Judgment of Special Term, Supreme Court, Albany County (Pennock, J) entered December 30, 1980, in an Article 78 proceeding which declared Section 206, subdivision 7 of the Town Law unconstitutional and annulled at a special Town election held pursuant to that statute.

Issues

The questions presented by this appeal are as follows:

1. Is Section 206(7) of the Town Law unconstitutional under the Due Process and Equal Protection guarantees of the New York and Federal Constitutions?

The Court below answered this question in the affirmative.

2. Is Section 206(7) of the Town Law unconstitutional under Section 1 of Article I of the New York Constitution?

The Court below did not reach this issue.

3. Is the Court of Appeals affirmance in Matter of Wright v. Town Bd. of the Town of Carlton (41 AD2d 290 [4th Dept., 1973] aff'd. 33 NY2d 977 [1973]) controlling precedent such that the doctrine of stare decisis would mandate an affirmance on this Appeal?

The Court below found the Matter of Wright precedent controlling in the instant case, but did not reach the question of whether stare decisis mandated that result.

Facts

On or about June 10, 1980, the Town Board of Guilderland passed a resolution calling for a public hearing concerning the consolidation of the Westmere and McKownville Water Districts pursuant to the provisions of Article 12, Section 206 of the Town Law. The public hearing was held on or about July 8, 1980 and the Town Board adopted a resolution purporting to establish the consolidation of the Westmere and McKownville Water Districts.

On or about August 27, 1980, a special election on the question of whether the two water districts should be consolidated was held in the Town of Guilderland, Westmere and McKownville Water District pursuant to Section 206, subdivision 7. Petitioners, John Esler and Mary J. Smith, attempted to vote in that election but were denied the opportunity because they

were not owners of taxable property as assessed on the last preceding assessment roll. Petitioner, Daniel E. Gaffney, was aware of the public notice concerning qualifications for elections and made no attempt to vote because he did not own taxable real estate in the Town. (R 35-43).[1]

Town Law, Section 206, subdivision 7 restricts eligible voters to "owners of taxable property" situate within one of the districts as assessed upon the last preceding Town assessment roll. After being denied the right to vote under this statute, the Petitioners commenced a proceeding under CPLR Article 78 for a Judgment declaring Section 206(7) of the Town Law unconstitutional, and for a judgment annulling the referendum held August 27, 1980 pursuant to that statute. The proceeding was heard before the Hon. John H. Pennock, at a Special Term of the Supreme Court in Albany County on October 23, 1980 and the Court concluded that Section 206, subdivision 7 of the Town Law was unconstitutional, and that the special election held August 27, 1980 in the Town of Guilderland should be declared null and void. In so holding, the lower Court relied on Landes v. Town of North Hempstead, 20 NY2d 417 (1967); Matter of Wright v. Town Bd. of Carlton, supra, and Phoenix v. Kolodziejski, 399 US 204 (1970), cases establishing that landowners and non-landowners alike are equally interested in an election concerning a water district, and holding that there is no compelling state interest or reason for excluding non-landowners from particpating in such election. (R 13-15).

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[1]Page references correspond to the Record on Appeal.

Respondents are appealing the judgment of the lower Court based in part on their claim that the Court of Appeals was in error in their affirmation of the decision in Matter of Wright, supra. (Respondents Brief, p. 23). Respondents suggest that the Court of Appeals in Wright erred in their application of the long standing principle of one man-vote because the water districts here at issue do not exercise general governmental powers and because the election at issue would disproportionately affect those voters to whom the franchise had been limited. The Respondents therefore conclude that the appropriate constitutional test is one of "mere rationality" rather than the "compelling state interest" standard that would be applicable if the one man-one vote principle were appropriate (Respondents Brief, p. 25).

Argument

As set forth in detail below, it is the Petitioners' position that Town Law, Section 206, subdivision 7 violates the Due Process and Equal Protection clauses of the New York and Federal Constitutions and violates Article I, Section 1 of the New York Constitution. Petitioners further submit that the Court of Appeals decision in Matter of Wright is binding on this Court on this appeal.

POINT I

SECTION 206, SUBDIVISION 7, OF THE TOWN LAW OF THE STATE OF NEW YORK IS UNCONSTITUTIONAL IN LIMITING THE FRANCHISE TO LANDOWNERS IN THE SUBJECT SPECIAL ELECTION.

The major thrust of the Respondents' position on this appeal is that both the Court below and the Court of Appeals in Matter of Wright, supra, erred in applying the principle of one man-one vote to the instant facts. According to the Town of Guilderland, matters involving water districts, the supply of water for drinking and other residential and commercial purposes and the supply of sufficient water for fire protection purposes (R 63-66), disproportionately affects property owners thereby only requiring that the State have a rational basis on which to disenfranchise non property owners. (Respondents Brief, pp. 17-19).

In our opinion, the Respondents err on both the law and the facts. As will be shown below, the U.S. Supreme Court cases relied on by the respondents are entirely distinguishable from the instant case. Further, under well established New York precedents, it appears to be the law of this State that matters involving water districts and water supply under the Town Law are matters of general public concern, affecting equally (for constitutional purposes) property owners and non-owners alike. Petitioners therefore conclude that both the Court below and the Court of Appeals correctly applied the Constitutional tests and found no compelling State interest in limiting the franchise to property owners.

Assuming arguendo that one man-one vote does not apply and that the Court need only find a rational basis for the Legislative disenfranchisement as urged by the Town, we submit that there is no rational basis on which the statute can be upheld.

A. One Man - One Vote

The principle of one man-one vote was first enunciated in the case of Reynolds v. Sims, 377 US 533 (1964), where the Court held that an attempt to apportion representation in the Alabama State Legislature on other than a population basis violated the equal protection clause of the U.S. Constitution, which required the adherence to the principle of one man-one vote.

> Weighting the votes of citizens differently, by any method, merely because of where they happen to reside is not justifiable, and impairs basic constitutional rights under the 14th Amendment; the conception of political equality can mean one thing -- one person - one vote. (Id. at 533).

The Supreme Court subsequently ruled that when one man-one vote applies to a given situation, the statute (or action) in question will be deemed unconstitutional unless both of the following are met:

> 1. Those excluded from the franchise are substantially less interested in the outcome of the election than those authorized to vote by property ownership qualifications; and
>
> 2. The interest promoted by limiting the franchise must constitute a compelling state interest. (Kramer v. Union Free School District, 395 US 621, [1969]).

Following the above rulings, two lines of cases have developed in the Supreme Court concerning the rights of

non-owners of property to vote in elections concerning water districts and their elected officials. In those cases where the following tests are both met, the Court concluded that one man-one vote did not apply and that a rational basis for the discrimination would suffice to uphold the statutory scheme:

> 1. The election involves functionaries whose duties are far removed from normal governmental activities; and
>
> 2. The functionaries activities disproportionately affect the particular group to whom the franchise has been limited. (Salyer Land Company v. Tulare Lake Basin Water Storage District, 410 US 719 [1973]; Associated Enterprises, Inc. v. Toltec Water Shed Improvements District, 410 US 743, [1973]; Ball v. James, _____ US _____, No. 79-1740 [1981]).

The second line of cases involving voting rights in water district matters have found that property owners and non-owners of property are equally interested in matters of public water supplie (i.e., the principle of one man-one vote does apply) and that there existed no compelling state reason to limit the franchise based on property ownership.[2] (Phoenix v. Kolodziejski, 399 US 204 [1970]; See Hill v. Stone, 421 US 289, [1975]; Matter of Wright v. Town Bd. of Carlton, supra; Landes v. Town of North Hempstead, supra; See Application of Cohalan, 71 Misc. 2d 196 [Sup. Ct., Suffolk Co., 1972] aff'd. 41 AD2d 840 [2nd Dept., 1973]; See Lippe v. Jones, 59 Misc. 2d 843 [Sup. Ct., Nassau Co., 1969]).

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[2]We have not found any case where the courts have identified a "compelling state interest" sufficient to uphold a property ownership qualification for voting.

In attempting to convince the Court that one man-one vote does not apply here, the Respondents discuss in considerable detail the first part of the above test (i.e., normal governmental functions) but offer very little discussion concerning the second (i.e., landowners will be disproportionately affected). In our opinion, both portions of this test cannot be met as a matter of law in New York, and the cases relied on by the Respondents can be readily distinguished.

In Matter of Wright v. Town Bd. of Town of Carlton, 14 AD2d 290 (4th Dept., 1973) aff'd. 33 NY2d 977 (1973), Mr. Justice Cardamone, in an opinion specifically affirmed by the Court of Appeals, considered the extent of the interests of resident non-owners of property in a water supply system.

> Property owners' and non-property owners' interests may differ, but both have the same vital concern in the availability of good drinking water, sufficient water to run their homes and businesses and to protect their property from fire. Non property owners of a proposed district have prima facie, a substantial interest in the outcome of the proposal (citations omitted). Thus, we conclude that voters who do not own real property are equally, and not less, interested in the outcome of the referendum as those authorized to vote by the property ownership qualifications. (Id. at 41 AD2d 293).

The above language clearly indicates that the activities of the proposed consolidated water district would have an equal, and not a disproportionate, affect on landowners and non-landowners. The Courts in Matter of Wright, in finding that landowners and non-owners were equally concerned about the supply and quality of water had before them the U.S. Supreme Court decisions in Salyer and Associated Enterprises, but did not find their

situations analogous to a general purpose water district under the New York Town Law.

Additionally, in Landes v. Town of North Hempstead, (20 NY2d 417, at p. 421 [1967]), Chief Judge Fuld observed:

> Indeed, most town problems affect owners and tenants alike: zoning, highways, parks, fire, water and sewer districts, traffic regulations -- to name but a few. Ownership of real property does not render one more interested in, devoted to the concerns of the town.

Judge Fuld went on to observe that:

> In a society such as ours characterized by its mobility and anonymity, a landowner is no more likely to be permanently established in a town, or by that token, better able to govern, than one who is not a property owner. (Id. at p. 421).

The Supreme Court in the City of Phoenix case stated:

> Property taxes may be paid initially by property owners, but a significant part of the ultimate burden of each year's tax on rental property will very likely be borne by the tenant rather than the landlord, since ...the landlord will treat the property tax as a business expense and normally will be able to pass all or a large part of this cost on to tenants in the form of higher rent. (399 US at 210).

While the above cited cases involved water districts, there are similar cases involving improvement districts which are worthy of note here. In Matter of Cohalan, 71 Misc. 2d 196 (Sup. Ct., Suffolk Co., 1972), aff'd. 41 AD2d 840 (2nd Dept., 1973), the Court had occasion to review the constitutionality of a requirement in Section 84 of the Town Law limiting the right to vote on questions regarding public appropriations to those with real property holdings in town. The Suffolk County Supreme Court agreed with Kramer and the cases above discussed and added the following note:

> Interestingly enough, in the case before the court the questioned non-property owners are asking that the tax moneys of the propertied class not be expended for a public purpose, which seems to bolster the logic of the Kramer case. (See also, Phoenix v. Kolodziejski, 399 US 204; Cipriano v. Houma, 395 US 701; Landes v. Town of North Hempstead, 20 NY2d 417) (Matter of Cohalan, supra at p. 197).

In the case of Lippe v. Jones, 59 Misc. 2d 843 (Sup. Ct., Nassau County, 1969), the Court, in reviewing the constitutionality of Section 213 of the Town Law, (which provides that only owners of tax-assessed real property in an improvement district are eligible to vote for commissioners of the improvement districts), held that such restriction unconstitutionally denies the equal protection of the laws to a resident of an apartment in an apartment house in the district. (Id. at p. 845). The Court indicated that such matters are of equal interest to landowners and non-landowners alike and cited the Landes case as support. (Id. at p. 844).

Similarly, in Hill v. Stone, supra, the Supreme Court held that a provision of the Texas Constitution and certain of its statutes were violative of the Equal Protection Clause of the Federal Constitution because the municipalities involved had not established that the election was of interest only to those who were allowed to vote (i.e., property owners) and for the further reason that the municipalities had failed to meet the "compelling state interest standard" which has consistently been applied by the Supreme Court in Kramer and Phoenix (supra).

We submit, based on the above, that as a matter of law in New York all residents are equally interested and concerned with theadequate supply of safe drinking water and water for fire fighting purposes (R 63-66). Even if this were not the case, however, the factual distinctions between the U.S. Supreme Court cases relied on by Respondents and the facts of this case clearly indicate that the Respondents cases are inapposite.

In the instant proceeding we are dealing with the consolidation of two political subdivisions of the Town, each of which was created and existed by reason of Legislative enactment (i.e., Town Law). The purpose of the districts and their proposed consolidation is clearly to benefit all of the residents of the Town. In Associated Enterprises, which was decided the same day the Salyer case was decided, the Court found that the Wyoming Water Shed District (like the Tulare Lake Basin Water District) was a governmental unit of special limited purpose whose activities disproportionately affected landowners in the district. The districts' operations were conducted through projects, and the land was assessed for any benefits received. Such assessments constituted a lien on the land until paid (Associated Enterprises, supra at p. 744).

In Salyer, the Tulare Lake Basin water district involved encompassed 193,000 acres, 85% of which were formed by one or another of four corporations. (Salyer, supra at p. 723). The costs of the project were assessed against each landowner according to the water benefits the landowners received, and

the primary function of the water district was the storage and delivery of water for agriculture. Id. at 728. In Ball, although as much as 40% of the water delivered by the district was used for nonagricultural, urban purposes, all the water was distributed according to landowners and the district could not control the use to which the water was put by landowners. Additionally, voting landowners were the only residents of the district whose lands were subject to liens to secure district bonds, who were subject to the district's acreage-based taxing power and who committed capital to the district. (Ball, supra at 49LW4463). The distinction between the lines of cases may be best reflected in the following quote by the Court in Ball:

> As repeatedly recognized by the Arizona Courts, though the state legislature has allowed water districts to become nominal public entities in order to obtain inexpensive bonding financing the districts remain essentially business enterprises, credited by and chiefly benefiting a specific group of landowners. (Ball, supra at p. 49LW4463)

The water districts in the instant case are public entities, not business enterprises and they benefit all residents, not just landowners.

We submit the above clearly establishes, as found by the Court below, that one man-one vote applies in this case and that the cases cited by the Respondents to the contrary are distinguishable.

B. Rational Basis.

If it is determined, however, that the principle of one man-one vote does not apply, the appropriate test of

constitutionality is the mere rationality test (See, Salyer Land Co. v. Tulare Lake Basin Water Storage District, supra). There is also a general presumption of constitutionality afforded the statute under these circumstances if the Court can perceive of a rational basis for the classifactions made. (Kramer v. Union Free School District, supra). However, this presumption is not applicable to those statutes which deny some resident electors the right to vote. (Kramer v. Union Free School District, supra, 395 US at pp. 627-628; Matter of Wright v. Town Bd. of Carlton, supra, 31 AD at pp. 293-294). Furthermore, the Court of Appeals in Landes held that the ownership of land as a prerequisite to holding elective Town Office constitutes invidious discrimination against landowners and runs afoul of the equal protection and due process clauses of both the Federal and State Constitutions. (Landes v. Town of North Hempstead, supra at p. 420). The Court then held that such invidious discrimination rendered the statute restricting elective office to landowners, unconstitutional. (Id. at 421 [1967]). We submit, based on the Landes holding that making the ownership of land a prerequisite to the right to vote in an election concerning the consolidation of water districts, constitutes invidious discrimination, and that where there is invidious discrimination, there is a presumption against the constitutionality of the statute promoting such. Therefore, we submit there is a presumption against the constitutionality of Section 206, subdivision 7 of the Town Law of New York, and, in our opinion,

the presumption against the statute's constitutionality cannot be overcome.

As there is a presumption against the constitutionality of this statute and as the Courts in New York have consistantly held that water supply matters are of equal concern to all residents, we submit there can be no rational basis on which to uphold the statute. Petitioners, therefore, urge this Court to affirm the ruling of the Court below.

POINT II

SECTION 206 SUBDIVISION 7 OF THE TOWN LAW OF NEW YORK VIOLATES THE NEW YORK STATE CONSTITUTION.

Section 206, subdivision 7 of the Town Law which restricts the franchise to the "owners of taxable property situate within one of the districts assessed upon the last preceding Town assessment roll" is also void on the ground that it contravenes the guarantees of the New York State Constitution, Article I, Section 1. The Court of Appeals decision in Matter of Hopper v. Britt, 203 NY 144 (1911) stated:

> It is well settled that legislation contravening what the Constitution necessarily implies is void equally with legislation contravening its express commands. By Section 1, Article I of the Constitution it is enacted that no member of this state shall be disenfranchised unless by the law of the land or by judgment of his peers. It is therefore clear that the otherwise plenary power granted to the legislature to prescribe the method of conducting elections cannot be so exercised as to disenfranchise constitutionally qualified electors, and any system of election that unnecessarily prevents the elector from voting or from voting for the candidate of his choice, violates the Constitution. (Id. at 150).

The Court of Appeals reiterated and reaffirmed this principle in People of the State of New York, ex rel. William Hotchkiss v. Smith, 206 NY 231 (at p. 242 [1912]). In Landes v. Town of North Hempstead, 20 NY2d 417 at p. 421, the Court held that rights of voters under Article I, Section 1 of the New York Constitution were violated by the arbitrary nature of the Legislature's classification based on property ownership. We submit on the basis of these cases, that Section 206 of the Town Law of the State of New York is

unconstitutional in that it unnecessarily disenfranchised constitutionally qualified electors.

Furthermore, this constitutional guarantee has equal application to elective bodies below the level of the State legislature. (Seaman v. Fedourich, 16 NY2d 941 [1965]; Trieber v. Lanigan, 48 Misc. 2d 435 [Sup. Ct., Oneida Cty. 1965]). Specifically, the Supreme Court in Trieber v. Lanigan, (supra) held:

> All municipalities, villages, towns, cities and counties, as political subdivisions of the state and exercising only those powers delegated to them by the state, must insure that the vote of each citizen is approximately equal in weight to that of every other citizen. This right is guaranteed by the New York State Constitution, Article I, Section 1 (Id. at p. 426).

Thus, it is clear that the principle of one man-one vote applies to the instant case not only for the reasons previously stated, but also because it is required by the New York State Constitution. This is a factor which was not dealt with in either the Salyer or the Ball cases because New York State was involved in neither. In the instant case, however, it is a major factor. We submit that regardless of the U.S. Supreme Court rulings or the mandates of the Federal Constitution, this statute violates the guarantees of the New York Constitution and pursuant to New York case law should be deemed unconstitutional.

POINT III

MATTER OF WRIGHT V. TOWN BD. OF TOWN OF CARLTON IS CONTROLLING ON THIS APPEAL

In Matter of Wright v. Town Bd. of Town of Carlton, supra, the New York Court of Appeals affirmed the ruling of the Appellate Division (41 AD2d at 294) that inter alia Section 209-e subdivision (3) of the Town Law was unconstitutional insofar as the statute required property ownership as a prerequisite for suffrage. We submit that Section 206 subdivision (7) of the Town Law at issue here reads, for all relevant purposes, identical to the provision ruled unconstitutional by the Court of Appeals. It is our belief that Matter of Wright is a valid and binding precedent, and must be followed in the instant case.

Respondents contend that Matter of Wright should not be controlling due to allegedly significant factual distinctions between the two cases. Respondents stress that in Matter of Wright, the statute at issue involved the creation of a new water district, while the statute in the presence case involves the consolidation of two existing water districts. According to the Petitioners, the residents in Wright were faced with the possibility of substantial changes in the governing of the area, and in the instant case, residents are not faced with such changes. We again submit that the Respondents err on both the law and the facts and that the minor factual differences between Wright and the instant case do not rise to the level of constitutional or decisional consequence.

An examination of the Town Law reveals that the Legislature saw fit to provide two virtually identical statutes regarding the consolidation (Section 206) or expansion (Section 209-e) of special use districts. In each case where an election is held only property owners can vote (Compare Town Law, Section 206, subdivision [7] with Town Law, Section 209-e, subdivision [3]) and it is necessary for a majority of voters in each of the consolidated districts (or in the existing area plus the proposed area of expansion) to approve the measure. While an expansion may subject the new area to a governing entity for the first time, the existing portion of the expanded district will remain within a special use district under the same Town's control, and, according to the Respondents' logic, these citizens would not be subject to any significant, new political body.

We submit that the distinction drawn by the Town lacks both logical and legal support. It is clear from both the Town Law and the record in this case that the result of a consolidation is a newly constituted political subdivision. The Town has already chosen a new name for the consolidated districts, and if effectuated, the new districts will have a new basis for assessed valuation, a new tax rate and a new level of debt and debt service. While the Respondents argue that these differences are insignificant in size, the Legislature did not limit the right to an election or the right to vote on such a test. Further, the Respondents penchant for labeling two combined districts as a consolidated district

rather than a newly formed district is no more than an exercise in semantics. We submit it is clear that two consolidated districts under the Town Law form a "new" political subdivision in exactly the same manner as a new subdivision is created by the "consolidation" of an existing district with a new area.

Since the factual differences between Matter of Wright and the instant case are not of constitutional consequence, we submit that the doctrine of stare decisis is applicable. Stare decisis is a strong judicial policy which demands that the determination of a point of law by a court will generally be followed by a court of the same or a lower rank in a subsequent case which presents the same legal problem, although different parties are involved in the subsequent case. (20 Am. Jr.2d Courts, Section 183). An adjudication of the Court upon a question properly before it, is not to be questioned or disregarded except for the most cogent reasons, and then only in a case where it is plain that the judgment was the result of a mistaken view of the condition of the law applicable to the question. (Rumsey v. N.Y. and New England Railway Co., 133 NY 79 [1892]; Donawitz v. Danek, 42 NY2d 138 [1977]). The lower court in its decision of the present case, relied heavily upon Matter of Wright, and obviously did not find that the judgment there was the result of a mistaken view of the condition of the law applicable to the question. We believe that the lower Court properly treated Matter of Wright as binding precedent, and we feel that this N.Y. Court of Appeals case, which entertained an identical

legal issue to the present case, remains binding on our case under the doctrine of stare decisis.

CONCLUSION

For the reasons set forth above, we urge this Court to affirm in all respects the Judgment of the Supreme Court holding Section 206, subdivision 7 of the Town Law of New York unconstitutional and voiding the special election held in the Town of Guilderland on August 27, 1980.

RESPECTFULLY SUBMITTED,

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