

## Preserving Community in The City: Special Improvement Districts and the Privatization of Urban Racialized Space

Audrey G. McFarlane

### ABSTRACT

*Professor McFarlane examines the social and legal ramifications of the formation of business improvement districts (“BIDs”) in urban centers that levy additional taxes in particular geographic areas to provide supplementary services. Originally designed to further business development that would drive up the tax base of the entire city, these districts are increasingly being used by affluent city neighborhoods to enhance what are viewed as inadequate municipal services. Because cities are already divided into affluent, white neighborhoods and poor minority ones, BIDs are troubling in that they reinforce race and class divisions within what is theoretically an urban whole. Professor McFarlane examines BIDs in light of the lessons learned during the Civil Rights era when the Court developed its one person, one vote jurisprudence. – Stanford Agora*

### INTRODUCTION

Urban metropolitan regions and the cities within them are sites of localized place-making practices involving social conflict, domination and exclusion. That constant conflict exists, recurs and resolves itself according to relations of social power and authority fueled by discourses that rationalize and justify such outcomes as inevitable and fair. Law as an academic discipline has only belatedly come to acknowledge or appreciate these conflicts and confusedly ignores the ways in which law itself operates as a tool in perpetuating victories on behalf of the socially powerful. The purpose of this essay is to examine a recent trend in urban community preservation and development used by cities to attract and retain the middle class: the business improvement district (“BID”). This middle-class driven

## Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.

form of community development illustrates the use of law to mediate these conflicts by managing neighborhood service consumption demands through a form of decentralization of municipal service provision.

The goal of this essay is not to examine whether privatized entities should manage city neighborhoods. I believe that this already happens and will continue to be a trend so long as there are enough people with resources and the desire to do so. Our affluent neighborhoods have been leading the way in pooling their ample resources to supplement inadequate city services.<sup>1</sup> Instead, the purpose of this essay is to accept that some form of privatization of neighborhoods will happen in the future and to offer some insights on the tradeoffs made by allowing local institutions to track the already hardened lines of demarcation of space in the city that is racialized black and classified poor. This latest approach to middle class community development<sup>2</sup> requires us to consider the implications of decentralization for the role of cities as both political public interest entities and service providers. In other words, how should service delivery be reconciled with democratic and egalitarian principles? In this essay, I will ground my discussion by offering an example of urban living and the boundaries

---

<sup>1</sup> See, e.g., Andrew Jacobs, *Summertime Circus Grows More Civil*, N.Y. TIMES, July 16, 1995, at CY6; Peter Fimrite, *Private Security Business Booms: Americans Taking Care of Their Own Safety*, S.F. CHRON., Dec. 8, 1994, at A1; Jamie Stiehm, *Guilford to Expand Security Patrols; Non-paying Residents Asked to Support Private Effort*, BALT. SUN, Dec. 16, 2002, at 3B.

<sup>2</sup> Usually the term “community development” is used in connection with grassroots development efforts in low-income neighborhoods. Development is a term of art used to describe construction of buildings and infrastructure. Of course, the term need not be and in fact is not limited so narrowly. Instead, development takes on a different meaning depending on the adjective modifying the term. Therefore, the term “urban development” conjures up images of the large-scale, city-profile enhancing projects designed to cater to the tastes of those who would make use of entertainment venues like stadiums, arts and performance houses, convention centers, festival market places etc. Community development is typically associated with housing development, usually through the efforts of community-based or community-oriented organizations working to repair the social fabric of urban communities experiencing decline, usually related to industrial and/or middle-class disinvestment in the city. In addition to redeveloping housing, community development often involves working to fill the unmet need for social services. See, e.g., PETER MEDOFF & HOLLY SKLAR, *STREETS OF HOPE: THE FALL AND RISE OF AN URBAN NEIGHBORHOOD* (1994) (chronicling the success of one of the more genuine grassroots community initiated redevelopment efforts). Community housing development has also expanded to community economic development, which focuses community-based efforts on establishing basic commercial services such as supermarkets, laundries, and other commercial retail services in a geographic area. Much of mainstream urban development is also a spatial process of

## **Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.**

between affluence, race and poverty. I will then discuss the rise of special districts and the equity and democratic issues they present. Finally, I will recount an example of an actual public hearing held to discuss reauthorizing a special district and will discuss the insights the hearing provides into understanding that these special districts are not just about business, but are about community.

### **I. AN URBAN REALITY: CROSSING THE BOUNDARIES OF URBAN AFFLUENCE, RACE AND POVERTY**

I live in a gentrified neighborhood, of restored nineteenth century townhouses inhabited by primarily white, affluent professionals, most without children, drawn by the allure of the historic neighborhood's carefully preserved beauty, its central location and the spice of urban living. I view my neighborhood as a bunker. Instead of being lulled by the restored beauty within the neighborhood, I cannot ignore what is just outside the boundaries. The neighborhood is surrounded on three sides by the overwhelming reality of central city living: blackness, disinvestment and poverty. Moreover, as a black woman, I am conscious of how my white neighbors view me as a representative of that reality. My house serves as my anchor, my proof of membership in the neighborhood. When I am away from it, few are willing to venture a conversation beyond a cautious and reserved hello in response to my extra-friendly "I'm not going to hurt you or ask you for money" morning greeting. Sometimes I don't bother and take comfort in the alienated freedom of not having to put energy into a greeting.

In order to leave my neighborhood, I cross a beautiful boulevard that serves as a border, a demarcation line between my neighborhood and the next one over. Once I walk a block beyond this border, I am confronted by a dramatically contrasting reality. Equally grand nineteenth century townhouses are in various states of disrepair, some doggedly preserved with cheap materials, some boarded up and many chopped up into cheap apartments. The unevenly restored beauty is still

---

exclusion.

## **Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.**

evident but the losing struggle to preserve and survive is starkly portrayed both by the condition of the housing stock and the overwhelmingly black and poor residents going about life in a very different way than on the other side of the dividing line.

I cross this border between black and white, rich and poor several times a week during the early morning when I walk across the boulevard past the public housing project to the gym at the YMCA. On my way out of my home, I sometimes pass a young black man in a red coverall stooped over a dust pan and broom, attentively sweeping dirt, candy wrappers and flyers up from the relatively neat streets. The back of the coverall is emblazoned with a stitched label: "Midtown Benefits District." As I pass from my world of having an employee specifically dedicated to cleaning my street I enter the sharply contrasting world of the next neighborhood over. There, the litter problem (particularly just prior to garbage collection day) is unattended -- I often see litter strewn on the sidewalk and garbage spilled in the alleys. One sunny morning as I headed home, I encountered an elderly black woman in a pink housedress picking up pieces of litter carelessly strewn on the block by someone else. I smiled, greeted her, "Good morning" and commented, "You are doing your good deed for the day." She returned the greeting and responded, "I've been doing this everyday for years." I nodded sympathetically. As I continued home, I thought about the man in the red coverall carefully cleaning up the behind the scores of attentive homeowners who often themselves pick up the litter dropped by careless passersby. I also thought of the smaller numbers of attentive homeowners just a few blocks away with much more litter to contend with. Wouldn't that neighborhood benefit from a person in a red coverall as well? As I approached my block, I encountered the young man in the jumper and pointed out to him a shattered beer bottle strewn in the street just to the left of my car's front tires, hidden from view from where he was standing on the sidewalk. The young man thanked me for pointing it out and promised to pick it up. As I enter my home, the irony of my position as both privileged and oppressed is not lost on me.

The young man in the red coverall works for a special benefits district reflective of a recent

## **Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.**

trend in local government to create neighborhood level entities to deliver enhanced supplemental municipal services. In the past 15 years, state and municipal law has authorized, usually predominantly commercial districts to organize themselves into legally recognized mini local governments to provide supplemental services within the district. The generic term for these districts is “business improvement district” (“BID”) although the name varies. In my city, they are called community benefits districts.<sup>3</sup>

### **II. DECENTRALIZATION WITHIN THE CITY: THE BUSINESS IMPROVEMENT DISTRICT**

Ever since Alexis D’Tocqueville observed with such enthusiasm the seemingly miraculous effects arising from individual citizen involvement in the affairs of running their own communities,<sup>4</sup> we have been aware that the involvement of people is important for their own self-development and empowerment. This enthusiasm, albeit more tempered, was echoed by John Stuart Mill, who viewed local participation as an education in how to live one’s life.<sup>5</sup> More recently, municipal government<sup>6</sup> has become increasingly aware of the benefits of citizen involvement in community development and has sought to encourage such involvement for the instrumental reasons of getting citizens to take ownership of a project as well as removing opposition through inclusion in the formulation of government planning decisions. This trend is reflected in the spawning of community boards, local

---

<sup>3</sup> In Florida, they are called community development districts. In California, they are called municipal improvement districts. Joseph Seliga, *Democratic Solutions to Urban Problems*, 25 *HAMLIN L. REV.* 1, 24 (2001).

<sup>4</sup> ALEXIS DE TOCQUEVILLE, 1 *DEMOCRACY IN AMERICA* 67 (Henry Reeve trans., Francis Bowen & Phillips Bradley eds., 1989).

<sup>5</sup> JOHN STUART MILL, *ON REPRESENTATIVE GOVERNMENT*, Chapter 15 (“the great object which has been so much insisted on, the social and political education of the citizens, requires that they should be left to manage these matters by their own, however imperfect, lights.”)

<sup>6</sup> See Audrey G. McFarlane, *When Inclusion Leads to Exclusion: The Uncharted Terrain of Community Participation in Economic Development*, 66 *BROOKLYN L. REV.* 863 (2000-2001) (arguing that this local emphasis was spurred in part by the federal government’s linking of federal urban development funds to participatory requirements).

## Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.

school boards and other participatory institutions.<sup>7</sup>

The spawning of BIDs seems consistent with calls by those who favor decentralization to provide for neighborhood or block level entities to have decision-making authority and thus enable residents to derive a sense of involvement from acting to solve their residential issues.<sup>8</sup> BIDs are organized by property owners in a geographic area who follow mandated organizational procedures for creation of the district and then are authorized to charge a mandatory special assessment (an extra tax) from all property owners within the district in order to fund these services. In the ideal model of a BID, business owners work collectively towards their common goal of promoting economic development. Both they and the city benefit overall when they are able to foster increased tourist traffic by enhancing the efficacy of trash collection and maintenance; improving security through private patrols or added police protection; upgrading outdoor amenities like awnings, benches and lighting; and making the area clean, safe and attractive.<sup>9</sup>

BIDs also help with middle class community development. They allow owners to come together and work directly to maintain and improve their districts in ways that they design and implement. Accordingly, improvement districts follow another, more privatized model: the model of the homeowner's association. This model views the collective interests of neighborhood property owners as a collection of private individual interests whose common goal is to preserve and maintain property values through enhanced service delivery. This enhanced service delivery thus becomes the justification for the organization's existence and the organizing principle for its structure, which is

---

<sup>7</sup> See James Traub, *A Lesson in Unintended Consequences*, N.Y. TIMES MAGAZINE 71, Oct. 6, 2002, at 71 (arguing that community control of NYC schools was a dismal failure). But see Marilyn Gittell, *Critique of the Citizen Participation Movement in Education*, 159 J. OF EDUC. 7 (1977) (arguing that the problem was that the participatory reforms succeeded only in decentralizing an entrenched and ineffective formerly centralized bureaucracy).

<sup>8</sup> See generally GERALD E. FRUG, *CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS* (1999).

<sup>9</sup> See Richard Briffault, *Who Rules at Home? One Person/One Vote and Local Governments*, 60 U. CHI. L. REV. 339 (1993)

## Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.

commonly limited to property owners.<sup>10</sup>

There has been no small controversy over the operation of BIDs.<sup>11</sup> BIDs present an issue of equity between rich and poor neighborhoods in the city. Because cities are racially and economically segregated, the tension of race and class is unavoidably present.

### A. BIDS: THE CLASH BETWEEN SERVICES & EGALITARIANISM

It does not seem difficult to see that a system of voluntarily initiated improvement districts will result in unevenness in the quality of life between neighborhoods. My vignette at the beginning of this essay clearly illustrates the likely contrast in conditions between neighborhoods that could result. Poorer neighborhoods that adopt BIDs will raise less money because of lower property values even though they are likely to have more difficult problems to resolve. It particularly presents a problem in neighborhoods with significant amounts of vacant or abandoned property, since owners do not have much incentive to agree to the supplemental tax, assuming they are paying their taxes at all.<sup>12</sup> For example, in Baltimore, residents of a low-income neighborhood with a business strip and residences recently voted against implementing a BID because it was too expensive in addition to high municipal taxes.<sup>13</sup> Just as the decision to initiate a BID seems to involve a voluntary choice by property owners, the decision not to initiate a BID and pay a supplemental tax seems to also involve a voluntary choice. Inability to pay, however, should not be interpreted as synonymous with unwillingness to pay. Nevertheless, the adequacy of the provision of services in cities will most likely be measured by what

---

<sup>10</sup> See e.g., *Kessler v. Grand Cent. Dist. Mgmt. Ass'n, Inc.*, 158 F.3d 92 (2d Cir. 1998).

<sup>11</sup> See Jerry Mitchell, *BUSINESS IMPROVEMENT DISTRICTS AND INNOVATIVE SERVICE DELIVERY* (Nov. 1999), at <http://endowment.pwcglobal.com/pdfs/Mitchell.pdf>.

<sup>12</sup> Gargi Chakrabarty, *More area homes being foreclosed; Vacancies often lead to blight*, INDIANAPOLIS NEWS-STAR, Feb. 1, 2003, at 1A; Angelo B. Henderson, *As Neighborhood Falls, Lives Crumble: Part Two*, DETROIT NEWS, Sept. 23, 2002, at 1A; Emma D. Spong, *Action Demanded on Vacant Housing*, BUFFALO NEWS, Apr. 20, 2002, at B3; Jim Haner and Matthew Mosk, *Slum bills gaining support; Bankers, landlords, delegates back more power to seize houses; A state of emergency, Owners change sides to protect investments in Baltimore property*, BALT. SUN, Mar. 8, 1999, at 1A.

<sup>13</sup> M. Dion Thompson, *Neglected patch of city seeks renewal; Small, large steps proposed to spur Park Heights change*, BALT. SUN, May 28, 2001, at 1A (Benefits district proposal that would cost homeowners and business owners an additional \$55 to \$72 annually in taxes rejected. According to one resident, "why

## Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.

the city provides generally to each neighborhood, ignoring the impact of affluent neighborhoods pooling their resources for themselves. If services are lacking all over the city, to allow them to be enhanced in one area to acceptable levels and then to view this resource allocation issue as being merely due to private initiative is to impose a reinforcing disadvantage that should but will not be actionable.<sup>14</sup> The equity issue that is at once so strikingly apparent is yet elusive to grasp. The elusive aspect of the equity issue is figuring out how it differs from the inequities we currently see between urban neighborhoods. Wealth alongside poverty is common in many cities and seems inevitable, almost natural. The municipal entity that can take charge of tax revenues and direct them solely at the issues within the neighborhood is consistent with other localized municipal financing techniques such as tax increment financing, which finances a development in anticipation of increased revenues from a contemplated development. These revenues are restricted to the area in which the development is located and thus deprives the rest of the city of the enhancements to municipal revenues theoretically issuing from the development.

The equity concern bound up in BIDs is not immediately apparent due to the way they are generally conceived: BIDS are considered to exist to fulfill purely private purposes.<sup>15</sup> Privatization happens when enough people have resources that they wish to protect for themselves and when the law enables them to encircle these resources with legal boundaries. This is consistent with our recognition of property rights because we allow property ownership to fulfill a human need to own. It is

---

should we pay extra for services we already paid for and are not receiving?”)

<sup>14</sup> The equality in provision of services cases which found equal protection violations for poor conditions and services in black neighborhoods are of limited application to the potential impact of BIDs. The cases tended to have extreme facts of municipal inequalities such as lack of paved roads or sewer service in black neighborhoods and direct evidence of current and historical discriminatory intent. See *Hawkins v. Town of Shaw*, Miss., 437 F.2d 1286 (5th Cir. 1971). See also *Baker v. Kissimmee*, 645 F.Supp. 571 (M.D. Fla. 1986); *Dowdell v. Apopka*, 511 F. Supp. 1375 (M.D. Fla. 1981); *Johnson v. Arcadia*, 450 F.Supp. 1363 (M.D. Fla. 1978); *Towns v. Beame*, 386 F. Supp. 470 (S.D. N.Y. 1974); *Selmont Improvement Assn. v. Dallas County Commission*, 339 F. Supp. 477 (S.D. Ala. 1972); *Hadnott v. City of Prattville*, 309 F. Supp. 967 (M.S. Ala. 1970).

<sup>15</sup> See, e.g., *Kessler v. Grand Cent. Dist. Mgmt. Ass'n, Inc.*, 158 F.3d 92 (2d Cir. 1998).- (residential tenants sued unsuccessfully to gain more than token representation on the board of one of the earliest and largest

## Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.

a method of creating an identity and protecting of one's self by gaining control of material resources.<sup>16</sup>

Arguably, our trend towards "publicness" arose during an era of severe lack of resources, the Great Depression, when it was understood that unless a broad, collective approach to meeting human need was taken, some would go without. Today, many cities fail to adequately meet desires for a particular level of type of service. The response has been to begin to decentralize provision of these services into sub-local, quasi-private governmental entities such as BIDs. In the neighborhood context, the pooling of resources towards a common goal fulfills a desire to achieve a neighborhood identity of orderliness and cleanliness, features associated with prosperity. It also allows protection of self and family by demarcating a protected or defensible space.<sup>17</sup>

Privatization of municipal services has received a great deal of attention in social science and legal literature, most of it critical.<sup>18</sup> Nevertheless, the trend continues, usually in one of three ways. First, privatization of employment relationships occurs through sub-contracting with independent contractors.<sup>19</sup> Second, privatization of development takes place through the creation of autonomous public authorities to accomplish major building projects, such as stadiums, free from the constraints of governmental red tape and direct public accountability.<sup>20</sup> Third, the most recent trend in local government privatization is the BID.

---

special improvements districts, the Grand Central Partnership in New York City).

<sup>16</sup> See Floyd Webster Rudmin, *Ownership as Interpersonal Dominance: a History and Three Studies of the Social Psychology of Property* (1988) (unpublished Ph.D. Dissertation, Queen's University at Kingston (Canada)) (arguing that ownership reflects interpersonal dominance, i.e. through control of property, owners dominate other people) (on file with author).

<sup>17</sup> See, e.g., OSCAR NEWMAN, *DESIGN GUIDELINES FOR CREATING DEFENSIBLE SPACE* (1972).

<sup>18</sup> See e.g., Shirley Mays, *Privatization of Municipal services: A Contagion in the Body Politic*, 34 DUQ. L. REV. 41 (1995); Donald G. Featherstun et al., *State and Local Privatization: An Evolving Process*, 30 PUBLIC CONTRACT L.J. 643 (2001); David R. Reimer, *Government as Administrator vs. Government as Purchaser: Do Rules or Markets Create Greater Accountability in Serving the Poor?* 28 FORDHAM URB. L.J. 1715 (2001).

<sup>19</sup> See, e.g., *Konno v. County of Hawaii*, 937 P.2d 397 (Haw. 1997); *Wash. Fed'n of State Employees v. Spokane Com'ty College*, 585 P.2d 474 (Wash. 1978).

<sup>20</sup> See e.g., DONALD AXELROD, *SHADOW GOVERNMENT: THE HIDDEN WORLD OF PUBLIC AUTHORITIES* (1992); JERRY MITCHELL, *PUBLIC AUTHORITIES AND PUBLIC POLICY: THE BUSINESS OF GOVERNMENT* (1992); ROBERT CARO, *THE POWER BROKER: ROBERT MOSES AND THE FALL OF NEW YORK* (1972).

## Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.

That BIDs involve the privatization of public services has received less attention in the legal literature. Perhaps this is because the district represents an odd confluence of disparate trends and mechanisms. It combines the long-existing mechanism of the special assessment for local improvements usually charged to owners of real property who specially benefited by an improvement, such as a road improvement passing by their property, with the special district, a permanent entity with jurisdiction over a particular geographic area authorized to assess taxes against real property, the funds from which are used to finance a particular activity. The most common example, with which we are all familiar, is the school district. To picture other examples, imagine any other city service you might want to receive and a district can be created to finance it. The special district has been combined with the ever-rising ubiquitousness of the homeowners' association, the dominant suburban model of neighborhood governance.<sup>21</sup> It does not seem a stretch to imagine that the explosive rise of common interest communities in the suburban context is influencing our expectation of which services local residents can in fact be responsible for arranging and delivering to themselves.<sup>22</sup>

Another elusive aspect of the equity issue is perhaps caused by the use of the term "business" in the BID label. The local governing organization formed to exclusively pursue this economic purpose, the BID, is viewed as having only business as its mission. The commercial neighborhood is conceived as having only an economic purpose. As described above, this model of business improvement need not be understood nor applied solely as a for-profit business enhancement or economic development strategy. In fact BIDs are rarely confined solely to residential neighborhoods. Instead, in an urban setting they are as likely to be located in geographical areas that are mixed residential and commercial,

---

<sup>21</sup> See generally EVAN MCKENZIE, *PRIVATOPIA: HOMEOWNERS ASSOCIATIONS AND THE RISE OF RESIDENTIAL PRIVATE GOVERNMENT* (1994); JOEL GARREAU, *EDGE CITY: LIFE ON THE NEW FRONTIER* (1991).

<sup>22</sup> The statistics show that as of 1998, the number of home-owner associations in America has jumped from 500 in 1964 to 205,000 in 1998. About 42 million Americans are living in common interest developments ("CIDs"), with at least 8 million people living in gated communities. This represents approximately 15% of the US population. Sheryll D. Cashin, *Privatized Communities And The "Secession Of The Successful": Democracy And Fairness Beyond The Gate*, 28 *FORDHAM URB. L.J.* 1675, 1676 (2001).

## **Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.**

or they may be attractive for use in purely residential areas. In addition to the equity issues, this raises significant questions of participation because voting can be and often is limited solely to property owners. Because of their privatized image and nature, BIDs present a challenge to legal doctrine's ability and willingness to protect the citizen right to participate in local government.

### **B. BIDS: THE CLASH BETWEEN SERVICES AND DEMOCRACY**

Improvement districts contain a major internal issue of governance: should they be governed like a city, or like a homeowner's association? Should the district be able to distinguish between the residents of a district and limit votes to resident property owners? Even if we assume a principle of inclusion, does weighting the vote work? Can the vote be limited to or weighted in favor of property owners? The answer to these questions thus far has been based on an interpretation of the Equal Protection Clause's application to the fundamental practice of voting. As the following discussion shows, normative arguments for egalitarian notions of inclusion have to be weighed against the recognition of decentralization and the group formation principles it embodies. In other words, can democracy be reconciled in a way that allows the trash to be collected in city neighborhoods?

Starting in 1964, the United States Supreme Court began to use the precepts of the Equal Protection Clause to support principles of inclusiveness in local government elections. The first guarantee of inclusiveness was to reinforce the effectiveness of each citizen's vote. Using the rubric of "one person one vote", the Court required state elections of legislative representatives to be structured such that equal populations of voters had an equal number of representatives.<sup>23</sup> Four years later, the Court applied this principle to local government elections as well.<sup>24</sup> This protection of voter voice was

---

<sup>23</sup> *Reynolds v. Sims*, 377 U.S. 533, 579 (1964) (holding that the Equal Protection Clause prohibits states from effectively diluting the strength of voters' voices and requires representation in the legislature proportional to the number of votes present in a jurisdiction).

<sup>24</sup> *Avery v. Midland County*, 390 U.S. 474, 481 (1968) ("We ...see little difference, in terms of the application of the Equal Protection Clause and of the principles of *Reynolds v. Sims*, between the exercise of state power through legislatures and its exercise by elected officials in the cities, towns, and counties.") In 1970,

## Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.

tested in a different and very significant way in 1969 in the case of *Kramer v. Union Free School District*.<sup>25</sup> In that case, the Court moved beyond considering the Equal Protection Clause's protections with respect to issues of proportionality and instead moved to issues of definitional exclusions of voters. In other words, who qualified and who did not qualify to be a voter? *Kramer* presented the question of whether the Equal Protection Clause constrained the ability of local government to exclude voters from the franchise based on property ownership or other indicia of being "primarily interested" or "directly affected" by the activities of the governmental entity. The Court strictly scrutinized a school district election law that excluded non-property owners without children from participating in school board elections. Up to that point in time, it was well accepted that local governments had wide discretion in structuring elections.<sup>26</sup> The Court narrowed that power and held States could only exclude otherwise qualified residents from local government elections, including school district elections, if they had a compelling state interest and such exclusion was necessary to achieve the articulated state goal.<sup>27</sup> The Court explained, "since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized."<sup>28</sup>

In response to arguments the school district served a limited or special purpose and therefore

---

the principle of one person-one vote was extended to an election in a junior college district that diluted voter strength because the Court found the district exercised important general powers of government such as the power to levy and collect taxes, issue bonds and acquire property by condemnation. *Hadley v. Junior College District*, 397 U.S. 50, 53-54 (1970).

<sup>25</sup> 395 U.S. 621(1969).

<sup>26</sup> See *id.* at 639 ( J. Stewart dissenting) (citing *Lassiter v. Northampton County Election Bd.*, 360 U.S. 45 (1959)). Justice Stewart later argues: "the franchise"--that we are dealing here, [is] not with a general election, but .... a limited, special-purpose election." In an accompanying footnote he noted, "Special-purpose governmental authorities such as water, lighting, and sewer districts exist in various sections of the country, and participation in such districts is undoubtedly limited in many instances to those who partake of the agency's services and are assessed for its expenses. The constitutional validity of such a policy is, it seems to me, unquestionable." *Id.* at 639, n.9. But of course this does not answer the question because any resident will use the services and pay. How broadly do you define using the services? *Kramer* drew it broadly and limited the criteria to residency.

<sup>27</sup> *Id.* at 623.

<sup>28</sup> *Id.* at 621 (quoting *Reynolds v. Sims*, 377 U.S. 533, (1964)).

## Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.

the state could determine the eligible local electorate based on those who were primarily interested, the Court held that the subject matter of the election, i.e. whether the governmental entity was exercising general legislative powers, was not relevant. Instead, strict scrutiny was triggered because some residents were permitted to participate and some were not.<sup>29</sup> The opinion noted but refused to decide under what “circumstances [the State] might limit the exercise of the franchise to those ‘primarily interested’ or ‘primarily affected.’”<sup>30</sup> The rejection of the property ownership basis for limiting the franchise was reinforced by two other cases immediately following (with one decided on the same day as *Kramer*) that prohibited limiting the franchise to property owners, even on financial matters.<sup>31</sup>

*Kramer* left open the question of whether there would be some set of circumstances in which the government would be able to justify limiting the franchise in an election to a subset of residents.<sup>32</sup> In some ways, the opposite result to that of *Kramer* makes more intuitive sense. The law could have assumed that those primarily interested were those directly affected by the decisions of the district which under a limited or narrow view meant property tax payers because they pay directly into the “pot” and parents have a direct stake through the presence of their children in school. But for some reason, the Court found this narrow definition of “affectation” (those who were the most affected) troubling. *Kramer* represented the high point in municipal voting jurisprudence because the Court sharply curtailed the ability of municipal governments to define eligible voters based on unsupported determinations of interest in an election. The holding was based on the broadest conception of and commitment to democratic principles. It seems likely the decision was influenced by its Civil Rights era

---

<sup>29</sup> *Id.* at 629.

<sup>30</sup> *Id.* at 623. But the court noted that even in such a case, the state would be required to “accomplish this purpose with sufficient precision to justify denying the appellant the franchise.” *Id.* at 625.

<sup>31</sup> See *Phoenix v. Kolodziejski*, 399 U.S. 204 (1970) (striking down laws limiting general obligation bond elections to landowners); *Cipriano v. Houma*, 395 U.S. 701 (1969) (decided the same day as *Kramer* and striking down laws limiting revenue bond authorization elections to landowners).

<sup>32</sup> I think the exclusion may be necessary to promote a compelling state interest in having people be interested in joining group formation. The business of neighborhoods has been thought to be one of making community. That community is made through interaction, shared interests based on geography and a mutual sense of self-identification.

## Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.

context in which disingenuous state and local government actions to disenfranchise blacks left fresh in the justices' minds the ugliness and oppression of disenfranchisement. Thus, following *Kramer*, the basic principle of residency as the basis for voting in voting rights law seemed very strong and subsequent cases have indicated that it is the bedrock foundation for inclusion in local government elections.<sup>33</sup> These decisions seemed to indicate a consensus that the Court had forged a new path in America's less than perfect past of practicing democracy at the local level.

Today the fears, fresh memories and concerns of the Civil Rights era have faded and the old practice of allowing municipalities to make distinctions with respect to voting have re-emerged. This time, these distinctions are justified on the grounds that BIDs are technically private entities, even though law authorizes them, charge mandatory assessments and make decisions that affect the lives of all residents. The new voting cases have elevated the "business purposes" of the special districts to the level of ignoring the entities public communal character and have allowed non-property owners to be excluded.

The answer to the inclusion question was both given and avoided in a subsequent line of decisions that avoided strictly scrutinizing the structuring of the franchise where a limited purpose government held the election. At issue in *Ball v. James* was a water district organized for the benefit of cattle farmers who wanted cheap ways to finance water irrigation. The farmers were allowed to adopt the form of a local government entity, the special district. This allowed them to issue tax-exempt bonds and exercise a few other municipal powers. The challenge arose when they began to take on a larger role of providing electricity as part of their goal to subsidize water delivery to their members and ended up delivering electricity to hundreds of thousands of residents of Phoenix, Arizona. Non-property owners in the district sought to obtain the right to vote in water district elections. The Court rejected this challenge on the basis the district exercised narrow governmental powers and existed to fulfill

---

<sup>33</sup> See, e.g., *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60 (1978) (finding that the one person one vote cases were based on residency).

## Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.

business purposes. The special interest rationale had seemingly been rejected in *Kramer*, but *Ball* entered the small opening left by *Kramer's* ambivalent acknowledgment that in some circumstances the election may be limited to those primarily interested and combined it with *Kramer's* attempt to declare that the subject matter of the election was irrelevant. The Court held that the determination of who was primarily interested was a relevant consideration and could be based on the subject matter of the election where that subject matter was special or limited. Therefore, in light of the presumed narrow purposes of the water district, non-property owners were mere ratepayers and entitled to pay only for what they received and no more. The opinion noted that the district did not exercise powers typically exercised by a municipality such as education and sanitation, thus suggesting that it was the type of function carried out by the district that determined its proper limitation. Therefore, for purposes of federal constitutional law, the property-ownership requirements for voting were perfectly valid.<sup>34</sup>

In both cases, the Court reinforced the idea in principle of the need for strict scrutiny for exclusions from local elections but took up the question left unanswered in *Kramer* and introduced a new principle – that of a special district entity formed to carry out a limited purpose. *Ball* upheld the limiting of elections in a water district that supplied electricity to millions of people under the rubric of the business limited purposes exception. It rattled off a laundry list of activities that the district did not engage in which it considered typically municipal and said that because the district did not involve those services, it was not really engaged in governmental activities at all but instead was acting in a quasi-private manner. Therefore strict scrutiny was not required and the offered justifications were plausible.

The decision in *Ball* that a special district election was properly limited to property owners in effect turns voting rights into mere consumption rights. Instead of a right to vote, residents have the mere right to be consumers. Consumption is central to the American economy and arguably the

---

<sup>34</sup> See Richard Briffault, *supra* note 9 at 361 (characterizing *Ball* and other cases as being based on the “proprietary model” of local government and characterizing the *Kramer* line of cases as based on the

## Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.

American way of life. It seems the ultimate in exercise of free choice and will. A consumer's sense of autonomy is illusory because in reality the consumer has no real ability to affect policy or other decisions. Instead, consumers are manipulated to gain their acquiescence and continued patronage. In my view, the citizen should not be reduced to the status of a mere consumer/voters ala Charles Tiebout.<sup>35</sup> They should be citizens who vote on those matters that affect their lives.

A further problem with *Ball's* reasoning was the laundry list of municipal activities that the special district did not engage in. Implicit in this list was the assumption that these municipal activities such as trash pick up, maintenance, schools, sanitation are what make a municipal government a real government. In truth, these activities do not actually have any bearing on whether a government is or is not a government. As the Court has discovered in the federalism context, there are very few traditional or essential governmental services.<sup>36</sup> Instead, all municipal activities are capable of being carried out by a private or public organization. The correct operative principle should be the level of public subsidy involved: is the public paying something directly to benefit the operation of the district? In *Ball*, the district was formed to benefit the farmers. The expenses of irrigation were subsidized by the electricity services. In return for the subsidy, a district formed for the very purpose of taking advantage of public powers unavailable to the private realm, should be the basis of defining who is interested or directly affected. The limits of the business purposes reasoning were demonstrated further by the *Kessler* case, a state case upholding the exclusion of tenants from voting. Even though the district engaged in municipal housekeeping and maintenance functions, the purpose was labeled primarily business. But how limited is a purpose that affects where someone resides? To characterize the entity's purpose as limited seems to ignore the level of impact that the special district can have on

---

democratic model of local government).

<sup>35</sup> See Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 41 (1956).

<sup>36</sup> See *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 545 (1985) ("The fact that an unregulated market produces less of some service than a State deems desirable does not mean that the State itself must provide the service; in most if not all cases, the State can 'contract out' by hiring private

## Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.

a person's life. Courts should adopt and enunciate a principle that does not confront people with exclusion in their daily lives. It should also enunciate a principle that takes into account public subsidy as mandating certain participatory safeguards to guard the public interest and investment in a particular enterprise.

On the other hand, *Ball* is consistent with decentralization. Devolution of municipal functions to geographical areas within a city requires recognition of the need to allow for group formation: the formation of subgroups that are gathered together to act in their own interests. Fulfilling the need for group formation, however, still requires a decision about who gets to be in the group. This depends on whom the courts decide is primarily interested in a neighborhood. Therefore, the remaining issue in special district jurisprudence is whether the interests of property owners are so much stronger than those of renters that it justifies the exclusion of renters from district elections. This is basically an empirical question. If heightened scrutiny is applied to the analysis of this question, it's not clear that any answer would suffice to pass muster under the test. Conceiving of a district as fulfilling purely business purposes serves to remove the issue from the strict scrutiny realm to the rational basis realm where only plausible justifications need be offered. If, on the other hand, we imagined a world where strict scrutiny applied, the result would be that tenants could vote as of right. How would that affect homeowners? Since tenants are considered to be transient and less interested, then what impact could they have on the decisions of a BID board?

Perhaps the assumption that tenants are more transient than homeowners is misplaced. While, in the aggregate, renters do move more often than homeowners, it is problematic to lump all renters into one category for a legal disability. Renting is more common among the young and those with lower incomes.<sup>37</sup> The duration of tenancy varies in different cities, with tight housing markets leading

---

firms to provide the service or simply by providing subsidies to existing suppliers.”).

<sup>37</sup> Jason Schacter, *Geographical Mobility: Population Characteristics, March 1999 to March 2000*, Current Population Reports, U.S. Dept. of Commerce, Economics and Statistics Administration, U.S. Census Bureau, 2-4 (May 2001) (also noting that White, non Hispanics had the lowest moving rate (14 percent)

**Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.**

to higher rates of long-term rental housing. The impoverished tend to be long-term renters as well. In effect, *Ball* creates a durational residency requirement by presuming length of stay from the type of land tenure rather than a person's real intent to stay. Rather than distinguish between the forms of land tenure, perhaps the better approach would be to allow a durational residency requirement for voting in smaller elections like BIDs and special districts.

**III. ARE IMPROVEMENT DISTRICTS REALLY ABOUT BUSINESS OR ARE THEY ABOUT COMMUNITY?**

What follows is a description of an actual reauthorization hearing for a BID in Baltimore, MD. The transcript is intended to illustrate that the internal issue presented by BIDs is that their boundaries rarely encompass merely businesses and present the gritty issues of community: dealing with an entity with which one disagrees, which one resents funding and from which one feels excluded, is a powerful influence on the meaning of city life. In particular, the new property-based voting utilized by business improvement districts represents a missed opportunity to confront the real issues about the intersection of race, space and politics.

**A. THE MEETING: TUESDAY, APRIL 16, 2002**

I attended a public hearing to discuss the reauthorization of the Charles Village Community Benefits District ("CVCBD"). Today is a very hot spring day -- it went up to 90 degrees. The hearing is held on Charles Street at the Old Friends Meeting House. The House is a colonialesque building with church like pews with bright gold velvet pillows on each bench. The structure of the benches is interesting. They are arranged in a square pattern that interlocks in the middle.

---

while Hispanics, Asians and Blacks had the highest moving rates, 20 and 19 percent respectively).

## **Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.**

Scheduled to start at 7:00pm, the meeting is not as full or packed as I thought it would be. At 7:10, it's filling up. The crowd is a very John Hopkins-esque looking crowd. Clearly upper middle class, mostly white, mostly 45 and above, although there are exceptions. There are only seven or eight black people out of a crowd of approximately 100. An erudite-looking, graying black man is standing to my left chuckling about software, his khaki dockers and navy blue polo shirt a perfect combination of neat but casual disarray. An Asian woman (she could be Filipina or Puerto Rican) comes over to say hello as well. The dapper black man sits down with her. A woman who looks just like Sonia Braga starts the meeting. She is Lisa Simeone, a National Public Radio correspondent who is also a Charles Village resident. She speaks in clear authoritative tones. She explains the process, the dignitaries present and asks the attendees to save speeches for letters to the editor so they can end the meeting at 9 p.m. She notes that passions are high. This is true since I overhear a couple of old guys sitting near me grumbling about a xeroxed flyer compiled by the Benefits District that had been distributed to the audience. The flyer touts the District's accomplishments. One of the men wonders aloud whether the "accomplishments" listed are really accomplishments and whether his tax dollars paid for it.

A short, well-dressed, dapper olive skinned guy with a blue shirt and khaki pants and a cheap-looking tie, Charles, begins the meeting by apologizing for the lack of microphones but stating his belief that the intimate setting would make it OK. He goes on to briefly explain the history of the CVCBD. He refers to a shocking murder that took place in 1990 (of a Johns Hopkins University student), to people leaving Baltimore in droves, etc. The common joke of the era was, "...Last person left, turn the lights off." Charles Village property owners sought authorization of the benefits district to manage problems locally. The State of Maryland said "no" at first. The second time, they modified the proposal and it was approved as a pilot program. The borders of the benefits district run down to the Wash Works (a car wash) down near North Avenue (a formerly grand commercial boulevard, still active, but now largely decayed and underutilized) and a mile to the east to Greenmount Avenue (a decayed commercial strip in a predominately black neighborhood). Charles explains that he was originally one of the opponents

## **Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.**

of the bill because the district could go on in perpetuity. He got a sunset provision put in to make the City Council reauthorize the experiment with revitalization once every four years. This year the City Council has to vote and the community input from this and other meetings will direct the City Council on how to vote. The audience is attentive, many women fanning gently to circulate the damp, old, warm air. A child plays on the ground, alternately gurgling and chirping noisily.

Charles concedes the benefits district has not eradicated poverty and he does not expect it to in his or his daughter's lifetime, but insists this is a unique experiment in the nation. When the benefits district was created in 1994, the tax base in the area was \$400,000. Now it's \$340,000, down because of the movement of non-profit organizations into the area. He asserts, however, the benefits district is about community economic development. He claims that the benefits district promotes the community through hosting festivals and by attracting investors. The benefits district also launched a Main Street economic development initiative. Charles then introduces a number of white women who work for the benefits district. He names a businessman who has given \$100,000 out of his own pocket to the benefits district.

Audience members' faces are starting to look a bit glazed and fixed in their view. "We're not finished yet," Charles continues. "The Board is not finished yet. Dick Cook helped arrange a pro bono study and evaluation of the organization. One of our weaknesses is communication and responsiveness. We've got to get better." The study also recommended strategic planning. Johns Hopkins University has provided over \$1 million in cash and in-kind services to the district. [Author's note: They do it out of self-interest because they are tax exempt (and presumably receive no tax benefit for charitable donations.)]

Applause breaks out. A staff person, Dan, is introduced. He's described as working 80 hours a week for pennies and is only 32 years old. Dan explains, "what we want is safe streets. The Safety Patrol is there to prevent things happening. Crime is down in Charles Village. How people feel is important." He then lists current district accomplishments. He explains that, "cameras are going to be

## **Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.**

installed, safety cameras, along Greenmount with help of Baltimore City and Abell Foundation. Trash -- not glamorous or pretty but they pick it up. We have access to a dumpster from a city. We are getting over 3,000 hours of community service from the courts. People are paying for what they did.” Dan explains the district is also considering a proposal to build a Giant supermarket at 33<sup>rd</sup> Street. They've helped five people purchase buildings by obtaining matching grants for improvements, supervised by the Maryland Historical Trust. They've worked with neighboring residents to get rid of disruptive residents from problem housing. Worked with owners of the vacant Census building on Howard and 25<sup>th</sup> to get zoning changes. They will build 90 loft apartments in that building.<sup>38</sup>

Next, three representatives from Mayor's Office are introduced: a harried looking white man named Izzy, a black woman (mid-40s), and a sharply dressed, sharp faced black man with shoulder-length dreads pulled back in ponytail.

Following the Board and staff statements, the meeting moves to audience questions. Lisa Simeone is introduced to moderate. She repeats her admonition “you don't have time to make a speech, please take time to formulate your question in advance.” Then she introduces the panel and calls out, “Betty someone”, an old time community activist. Turns out she's not present. “Betty are you here?” asks Charles. Other panel members drift up, taking their cue from the lack of Betty's presence.

The first audience question (submitted in writing) is: “Does a benefits district exceed its purpose when it acts as a CDC [“community development corporation”] and affects zoning issues?” Delano

---

<sup>38</sup> Who gets to vote in the Charles Village BID? Both property owners and tenants, although the Board must always be composed of at least two-thirds property owners. Bylaws of the Charles Village Community Benefits District Management Authority, Art. 2.02(B)(i), [http://www.charlesvillage.org/background\\_documents.html](http://www.charlesvillage.org/background_documents.html) (last visited Mar. 21, 2003).

## **Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.**

Bailey, black, 50ish and a Board member, answers “no”. “I’ve been a community activist for most of my life. Urban areas have a plethora of problems. The benefits district should be using a complete or comprehensive arm tentacles approach to deal with problems that are here. We are not only looking at the community at large but the benefits district in itself is a very special community. I believe that with the power that you give to this community, the benefits will be that it will spread beyond the boundaries of the district. We become an example of what can be a success story in your district.”

Lisa Simeone follows up by asking why a benefits district is necessary in a community that has a zoning board. Charles explains, “we don’t own property like a CDC. When someone wanted to put a pool hall on 25th street, we consulted the local neighborhood association, which said that as long as no liquor license was issued, that would be OK. Another building required a rezoning from industrial to residential in order to make the deal possible. The benefits district defers to the community associations on zoning issues. We don’t take a position contrary to the neighborhood association within which the property is located.”

A white woman audience member asks a follow up question about the foundation arm of the benefits district. Charles confirms that the benefits district has a foundation arm that owns the Benefits District’s headquarters building and that the district pays rent to the foundation for its office space. So the Benefits District does own property in Charles Village.

Another question (submitted in writing) is asked, this time about safety and walking patrols. The audience member pays extra taxes and does not see any improvement in the number of patrols or walkers. Two black women in the row just in front of me nod emphatically. A red headed white man on the panel (he is very preppy looking) (a Board or staff member) says, “I don’t see them on my block either, but I assume they are assigned to the most dangerous blocks...” He trails off. Lisa Simeone interjects a little desperately because the answer was so stupid: “But how is safety organized -- how does the benefits district interface with the police?” Charles interjects and asks a member of the Safety Advisory Council, a tall white woman in her late 50s, to speak; she stands and explains that the

## **Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.**

Safety Advisory Council keeps track of crime stats. “They are private citizens. They have radios. We work very closely with police in the Northern District. We've gotten a faster response. Based on their feedback they try to pay attention to the patterns of crime and push it out by readjusting the safety coverage.”

Lisa Simeone then states, “since a lot of people have questions about safety, anyone else want to speak about safety, feel the issue has not been adequately addressed?” Someone stands up and points out that liquor store on his block causes problems after 8:30pm. If the benefits district is reauthorized what will it do to address this? The Safety Advisory Council woman answers that we rely on community organizing. [Author’s note: In my personal opinion, the Safety Advisory woman does not look like someone who could organize people. She's in her late 50s, has a nervous general smile on her face, thick glasses.] He points out that a lot of people are afraid to go by the liquor store in the evening. The Safety Advisory woman agrees with the red headed man that maybe a video camera might be a good idea. She says that would be a great fundraising point.

Lisa has a follow up suggestion: “maybe people want to reallocate the budget to shift more towards safety and away from trash.” She then calls on another audience member, a black woman, short and round, in her late 50s to early 60s, Ms. Chambers. She states, “I guess I represent the very low part of the Charles Village. And I'm talking low! We live on the 22 hundred block. We have no safety, no sanitation. None.” The black lady seated in front of me says, “Yes! Right!” She continues vociferously, “we don't benefit and we are not giving you any more of our money and will be actively working to defeat this bill”. Ms. Chambers then complains that changing the name (of one of the constituent neighborhoods in the district) to Goucher was done without consultation with the owners in that neighborhood. She sits down, still grumbling angrily to herself. Delano stands up and talks about the liquor board. An audience member who spoke earlier says, “I'm sorry to interrupt you but we've done that. The liquor board is out for its own interests.”

Another audience member stands, Morning Sunvale (black woman in her mid- 40s) and states,

## **Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.**

"I never realized the Benefits District was only responsible to owners who own property. Renters are persona non-gratis. I called about some trash. No response. After a six-month letter writing campaign, I got permission and got volunteers and removed 3 months of trash. When the district delivers flyers, information, phone books they don't deliver to our building because we are renters." Charles responds: "whether you are a renter or homeowner you are entitled to service from the district. He then asks, "didn't I talk to you about this problem?" Morning responds, "That's a lie."

"We know," says Ms. Chambers meaningfully. "We're homeowners and we're struggling because we don't get any services. When we call and you see what area the call is from you don't get a response." A white woman on the panel (also very preppy looking) responds that her own neighbor has had an evolving relationship with the benefits district. She would like to see a person in a uniform on her block everyday and maybe they could do something (vague) to work together to make it more responsive to all our needs. The red headed man on the panel mentions that some guy used to do community organizing in his alley to set out rattraps, and argues that we need more community organizers to get residents involved. Delano responds, "Ms. Chambers makes a good point, we need more community participation. I would like to see more community participation."

Another black woman stands up, identifies herself as a renter and says, "We are upset. We are here to express our views." (That's right! says the black woman seated in the row in front of me). "When I moved here we did not know that the neighborhood had a benefits district. We did not realize that they had preconceived notions of who should be benefited. And it wounds me deeply!" A white man seated behind me, snorts exasperatedly.

Ms. Chambers stands up again: "I belong to a certain organization that owns property and when we try to participate on committees we don't get announcements of the meetings. We tried to attend one meeting and it was changed." She then repeats loudly several times, in an almost defiant, desperate, attempt to establish her standing and entitlement to recognition, "I am a homeowner! A homeowner, I'm a homeowner!"

## Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.

Lisa interjects: if we keep talking on top of one another, we'll be here all night. She then reads another question: why has property tax revenue gone down? The amount of tax revenue would seem to be an objective way to measure the success of the benefits district. Charles responds: "tax revenues are not only way of measuring success. We've got a lot of nonprofit properties that takes the property off the tax roles."

Question from audience: "You keep talking about Charles Village and property values going up there. What about other neighborhoods contained within benefits the district? What are the property values in other areas? What effect does vacant and abandoned housing have on the property values and the amount of tax revenues you get? That's why people's hackles go up when you talk about property values because my house goes for \$20,000 less than when I bought it." Charles responds: "These are the challenges of our community. But we are not the city. We have a very modest and narrow function. I've got to be honest, the benefits district is not structured or funded in a way that can deal with vacant or abandoned houses. It would break the organization to pretend we could try to deal with it."

An audience member, white and in his late sixties, stands up and states: "I'd like to talk to Ms. Chambers" bows his head, ("yes" Ms. Chambers says) "and Ms. Sunday?" ("yes," she responds). "I've lived here for 35 years. We've had problems with neighboring houses the whole time I've been here. Some of the houses on the 2800 block of Calvert Street are owned but not maintained. I've been very happy with the help of the neighborhood association in helping us to deal with it. All I want you to know is I'd be happy to come over to your house and talk to you about all of our problems. You'll laugh. Rats? We have so many rats my wife is going to write a book. But I love this neighborhood. I enjoy it. If you think you're being overlooked, you're not alone. Some of it is just luck. We didn't know who was going to be the owners. They are not bad people but they just don't keep the property up."

Ms. Chambers responds: "I've lived here for 30 years. I raised 18 of my 22 children and there's no dope on my block because of me!" The man to whom she was responding interrupts and asks her

## **Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.**

where her house is and offers to come by and help her. Ms. Chambers responds loudly, “I can control my block I don't need you! I'm a taxpayer and I'm entitled to services!” Lisa Simeone then interrupts, shouting: “I live on 31st and I have to shovel my block! The benefits district cannot be blamed for everything or handle everything!”

Another question from the audience: “The benefits district is not a public entity. It doesn't seem able to handle all of the problems because it is beyond its scope. Has it taken on too much?” Charles stands up again and responds: “I want to apologize to Ms. Chambers. I promise to send a cleaning crew to block this weekend and schedule a community meeting in the next 30 days at a location closer to you so your community can air its views about its needs. The problems are not unique and do not impact by race and income and block.” Charles then recounts how when he was looking for a home in Charles Village, a realtor told him he did not want to send a nice couple like him south of the 2700 block. “I fired him!” says Charles proudly. “Now I live on an integrated block. We live block by block. You live on the 2400 block but I live on 2500. This is the most balkanized city in the country. But it's a strength. Shows we have pride. But I can't afford to ignore what goes on Greenmount Ave.”

Delano interjects, “what the benefits district has done is strengthen the four constitutive [my word] community organizations. The South Charles organization has been weak. We've changed our name because we live in a mixed community.” (The black women who spoke grumble). “Many times at community groups at meetings, we don't have this level of turnout. We need participation. The idea of the district is to strengthen us on a community level.” He looks over his shoulder tentatively at Ms. chambers and Ms. Sunday, who are clearly not impressed.

Another audience question regarding economic development and prioritizing luring businesses versus supporting pro bono efforts by nonprofits. Charles responds: “Yay for economic development. The Census building will be worth \$8 million taxable dollars.” He then admits, “We don't do a good job in interfacing with the nonprofits.” An audience member retorts, “Even though I work for a church that doesn't pay taxes it does give a lot to the community.”

## **Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.**

Another question from audience: "Discuss the evolution of community organizing from the beginning. What's the vision for the role of community organizing in the benefits district?" Charles explains, "When started it had no community organizing function. It was a fee for services: safety and trash sweeps. One year later, organized block captains, community clean ups etc. As tax base shrank, we lost our organizer. Now we have one full time. We organize using two Vista volunteers and we're applying for two more. Ed you are asking a philosophical question. The Maryland study told us the three ways we act is: 1) fee for service; 2) advocacy -- going to the City and Annapolis (the state capitol); 3) mobilization -- reaching out and mobilizing and freeing up the resources in our communities. We've been the weakest here. I don't know if that means hiring another community organizer... or...?" He then introduces Sheila, presumably the community organizer. "At the town meeting in spring three years ago, there was a considerable discussion going on as to how we could increase our community organizing efforts. The consensus was that almost every project of the benefits district should have a community-organizing element. Safety team and community organizing component would help in organizing walkers. Sanitation, the effort theoretically was to help use block captains to help educate people on their block. A group of students on my block throw trash from the third floor."

Lisa Simeone: "Should we take more questions or should we end? It is a quarter to 9."

Audience member: "I have a comment. One block has a patrol person on the block 24 hours a day. We are going to have to figure out how much you've paid in versus the service you might wish for."

Final question from the audience: "Is it appropriate for the city to reauthorize the benefits district? They have a conflict of interest to shift the responsibility and then shift city resources to more vocal neighborhoods?" Charles answers, "Good question. When we created the district we wondered what prevents the city from sending city officers away from neighborhood because they have safety patrols. We have a contract with city that they can't do that. But city has reduced patrols nonetheless, because it is allowed to reduce pro rata if it does citywide reductions. Sharon Guida's committee's job

## **Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.**

is to meet with city each year to see how the city is meeting its commitment to us each year. Gives a point to fight over -- the base line services agreement -- that's one of the ways we try to do that." An audience member reacts: "Come on! What neighborhood is the city ever going to admit to reducing services? Not to Guilford [one of the most upscale, affluent communities in the city, predominately white], not to Sandtown, Winchester [one of the most impoverished neighborhoods, predominately black]. I think the city has an extreme conflict of interest." Charles responds, "Our success makes the city look bad. I don't think they have a conflict of interest. I don't see how having the state of Maryland approve the District would improve matters, they know nothing about us." Redheaded preppy man interjects, "I think we should get more services because we have shown we are willing to tax ourselves more. I think the city should match our tax dollars so we'd have more to work with."

Lisa Simeone: "Does anyone have any other questions before we wrap up and hear about the reauthorization process?" There are none. Charles speaks, "Let's thank Lisa and lets thank our panel members who don't get paid for doing this. The next steps are a planning commission hearing on the reauthorization and a city council hearing, probably held in the neighborhood." An audience member calls out, "When will residents get to vote?" Charles responds, "No referendum will be held. The initial election cost the city \$100,000."

The meeting adjourns.

### **B. IMPRESSIONS FOLLOWING THE HEARING**

At the end of the hearing, my impression was that the bill would be reauthorized. It cannot be said that any harm to its members comes from it. Even if the organization does not do all or as much as it is supposed to, when it is supposed to, and even if it has not done well in communicating with the poor black areas, the white people like it despite some grumbling. Delano's point is that it serves as a local organization bringing together groups that would be working disparately. The black women surely did not appreciate his suggestion that the onus was on them to participate and politically influence the organization. Obviously they felt some barrier that he did not. I was struck by Ms. Summers' six-month

## **Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.**

letter writing effort. She approached the problem as a customer seeking services, but obviously the district did not function like a corporate entity where your fees get you service. Instead it appeared to function as the neighborhood or political entity that it is. It responds to citizens based on their presence and status within a network. The organization cannot respond based on customer satisfaction because there is no economic incentive to do so.

What also stood out clearly was the fact that community organization figured so prominently in what the district felt it had to do in order to be successful. Consequently, the fee for services model of the private homeowners' association did not fit and proved inadequate to meet the disparate and complex needs of the district. Therefore, BIDs becoming residential improvement districts have the potential for being a new type of organization. They represent a way to devolve neighborhood planning, monitoring and maintenance to a neighborhood level. Therefore, closer attention needs to be paid to how they are internally structured. The internal structure cannot be one that merely models the business/ user fee for service model.

Additionally, residents of areas of the district that are racialized black and classified poor were somehow consistently overlooked for supplemental service provision. The perceptions of the residents of this area were that this was deliberate and consistent with the marginalization normally enjoyed by their neighborhoods. I posit instead, however, that the social relationships that structure black racialized space rarely involve conscious, invidious discrimination. Just the physical appearance of the structures, the physical appearance of most of the residents (black) and their economic appearance (poor and/or working class) are enough to communicate that the natural boundary line of the "improvement district" had been reached. Consequently, in order for poor, or working class black people to get adequate services they must cross a forbidding and unwelcoming boundary line of race and class and be prepared for constant fighting, resistance and advocacy.<sup>39</sup> Therefore, the internal

---

<sup>39</sup> See BELL HOOKS, *YEARNING: RACE, GENDER AND CULTURAL POLITICS* 23-31 (1990). ("marginality is much more than a site of deprivation; it is also the site of radical possibility, a space of

## **Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.**

issue of BIDs (who votes) affects the external issue (equity) because racialized space creates its own boundaries even within an improvement district.

### *Hearing Post-Script*

The City Council voted to reauthorize the CVCBD for only one additional year (instead of the statutorily provided four years). The process for examining reauthorization for an entire four-year period will be repeated in 2003. According to the CVCBD website, "The Board of Estimate did not fully understand the relationship between the CVCBD, the Charles Village Foundation and grant moneys." "Area residents expressed concerns related to the CVCBD and its budget. The CVCBD along with the City of Baltimore has been named as defendants in a lawsuit brought by some community members who are challenging reauthorization. The City Solicitor is going to represent both the City and the CVCBD. Resolution is expected in our favor."<sup>40</sup>

## **IV. CONCLUSION**

Just as the proliferation of suburban homeowners' associations raises serious issues of democratic participation in the affairs of the community by non-property owners, so too does the rising number of business improvement districts raise the issue of democratic participation. Because the BID manifests the almost irrefutable logic of decentralizing certain municipal functions to the neighborhood level, we can expect this to be an ever-increasing trend in municipal governance. As illustrated by the CVCBD, reauthorization description above, one aspect of these districts that has not been adequately examined is the fact that improvement districts need not be only commercially justified or of benefit only to commercial districts. Their methods and benefits can be applied to residential neighborhoods as a community development tool. In fact, many improvement districts are not strictly commercial -- they

---

resistance...")

<sup>40</sup> Minutes of Board of Directors Meeting, Charles Village Improvement District, [http://www.charlesvillage.org/board\\_directors\\_minutes/minutes\\_meetings/200206.html](http://www.charlesvillage.org/board_directors_minutes/minutes_meetings/200206.html) (June 11, 2002).

## **Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.**

either have individual residents living in, around or near the commercial district that has formed an official improvement district. As a consequence, we have a de facto, yet unexamined, trend in urban place making: the mixed improvement district, currently characterized as a business improvement district can more correctly be considered a residential improvement district (“RID”). At least one commentator has argued that the BID concept should be authorized by state and municipal law for use in purely or mainly residential neighborhoods.<sup>41</sup>

The attractive decentralization logic does not, however, answer the question of who should get to participate in BID governance as of right. This is particularly the case for BIDs that are located in mixed business and residential areas and also in light of proposals to make the BID mechanism available in purely residential areas, a very appealing proposal on its surface and troubling at its core. The voting issue is not just an issue of who gets to engage in the process of thumbs up, thumbs down as the right to vote jurisprudence emphasizes. It is also the ability to participate in deliberative activities. In framing the issue so narrowly, current voting rights doctrine ignores what is really at stake and what it takes to make a metropolis work, for people to feel like they have some say or influence over the things that affect them and that they do not feel officially and legally alienated. Feelings are important. This requires us to determine the entry points where deliberation gets to happen.

Perhaps we might be willing to allow the exclusion of non-property owners because it is necessary for the property owners to want to participate. What remains to be decided is whether the question of granting or not granting a right to vote presents valid concerns for administrability and governability. When the granting of the right to vote is tied to property ownership, this in effect grants a right to exclude based on class and affluence. In many cases this will also, but not necessarily, track racial divisions. Rather than presume that property ownership conclusively determines level of interest, the better approach is to start with residency as a basis for voting rights and then tailor voting

---

<sup>41</sup> Robert C. Ellickson, *New Institutions For Old Neighborhoods*, 48 DUKE L.J. 75 (1998).

## Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.

criteria to meet the need both for group formation as well as broad principles of inclusion.<sup>42</sup> Otherwise, the result will be that the social power of the middle class or the affluent will dominate voting rights jurisprudence by having political power track land ownership and monetary power.

As the Charles Village reauthorization hearing description illustrates, the business of neighborhoods is not merely economic; it is personal, political, and is fraught with the tensions of communication across class and racial lines. The Charles Village approach to the participation issue is exemplary – they decided to adopt a principle of inclusion to allow both property owners and renters to vote (while ensuring a property owner majority on the board of directors). The healthy principle of inclusion requires the BID to be responsive to the needs of all residents (at least theoretically). As the transcript also reveals, however, inclusion does not necessarily lead to having the organization be responsive to your needs. Clearly a fragmentation between desirable and undesirable places within the district influenced the provision of services within the district. Therefore, inclusion is a structural starting point for participation. What needs to follow is actual involvement in the politics of the organization in order to influence it to one's own ends. This is where the real work of democracy takes place once a structural entry point of voting has been provided.

The improvement district approach to filling in municipal shortfalls is driven in particular by the focus of municipal policy on the affluent and satisfying their needs. As a result, BIDs are a manifestation of old social and geographic relationships of exclusion and marginalization in the city. Because we continue to live in geographic segregation that tracks race and class, the marginalization that existed de facto is now being transformed into legally protected boundaries within the city that will track the boundaries of racialized space. The popularity of BIDs and the capturing of resources in one BID will enhance the quality of municipal services in some districts at the expense of the quality of services and of life in other districts. To the naked eye sweeping over the complex geography of the

---

<sup>42</sup> See Flaya Anthias, *The Concept of 'Social Division' and Theorising Social Stratification: Looking at Ethnicity and Class*, 35 SOCIOLOGY 835 (2001) (arguing that "class, gender and ethnicity are the primary

**Stanford Agora: An Online Journal of Legal Perspectives, Vol. 4.**

city, it will appear that the disparities will be as they always were. To the extent that this reinforcement of disparities of race and space takes place, it will be consistent with the way in which we already know how to live. We all know where we belong and where we don't want to be.

---

divisions ... of stratification in modern societies").