INDEX

LoneDissent.org

CITATIONS

LoneDissent.org

LoneDissent.org

LoneDissent.org

LoneDissent.org

LoneDissent.org

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 48

ANNIE E. HARPER, ET AL., *Appellants,*

v.

VIRGINIA STATE BOARD OF ELECTIONS, ET AL., *Appellees.*

On Appeal from the United States District Court for the Eastern District of Virginia

---

BRIEF FOR THE APPELLANTS

OPINION BELOW

The opinion of the District Court (R. 31-33) is reported at 240 F. Supp. 270.

JURISDICTION

The jurisdiction of the District Court in this case was invoked under the Fourteenth Amendment to the United States Constitution, 42 United States Code § 1983 and 28 United States Code §§ 1343(3), 2201 and 2202. The judgment of the District Court was entered on November 10, 1964, and notice of appeal was filed in that court on Decem-

LoneDissent.org

ber 4, 1964 (R. 34-37). The appellants' jurisdictional statement was filed on January 15, 1965, and probable jurisdiction was noted by this Court on March 8, 1965 (380 U.S. 930) (R. 37). The jurisdiction of the Supreme Court to review the decision of the District Court by direct appeal is conferred by 28 United States Code §§ 1253 and 2101(b).

QUESTIONS PRESENTED

I. Whether provisions of Virginia law which require the payment of poll taxes as a prerequisite to voting in state and local elections violate the Fourteenth Amendment by denying the franchise to paupers and indigents and other persons who are without economic means to pay the taxes, but who are otherwise qualified to vote.

II. Whether persons who brought suit contesting the constitutionality of Virginia laws requiring the payment of poll taxes as a prerequisite to voting in state and local elections on the ground that such requirement discriminatorily disenfrachises them and other persons similarly situated who are without economic means to pay such taxes, and whose standing to sue is challenged by the State on the ground that "paupers" are disqualified from voting under state law, are entitled to a judicial determination that the "pauper" disqualification is invalid under the Fourteenth Amendment.

STATE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the Virginia Constitution and of the State's statutes are set forth in the Appendix, *infra.* pp. 36-41.

STATEMENT

This case is before the Court on appeal from an order of dismissal entered by a three-judge court convened pursuant to 28 United States Code § 2284. The appellants brought the action on behalf of themselves and other simi-

LoneDissent.org

larly situated, for the purpose of having declared unconsittutional and to enjoin the enforcement and execution of provisions of the Virginia Constitution and statutes which require the payment of poll taxes as a prerequisite to registration and voting in state and local elections (R. 2-7).[1] The appellants, in the District Court, also challenged the the constitutionality of the provisions of § 23 of the Virginia Constitution and § 24-18 of the state Code which disqualify "paupers" from registering or voting in any election conducted in the State (R. 22). The poll tax requirement and "pauper" exclusion were alleged by the appellants to be violative of the Equal Protection and Due Process clauses of the Fourteenth Amendment.

The appellants are Negro citizens of the United States, and residents of Virginia and of Fairfax County within that State (R. 3, 5). They desire to register and vote in future state and local elections, and qualify to do so in every respect but one; they lack economic means to pay the poll taxes required of them by the laws of Virginia (R. 3).

Appellant Annie E. Harper is single; she formerly supported herself principally by doing household or domestic work; at present her sole regular income is derived from Federal social security benefits. Appellant Harper, because she has been a resident of Virginia for more than three years and has never paid poll taxes, is required by Virginia law to pay three years' back poll taxes ($1.50 a year), plus five percent penalty for late payment, as well as interest

---

[1] The 24th Amendment to the Constitution of the United States is inapplicable to state and local elections; it provides as follows:

> "The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax."

LoneDissent.org

charges, in order to register and qualify to vote in future state elections (R. 3-4).[2]

Appellant Gladys A. Berry is single; she is not gainfully employed and has no regular income; she provides day care for seven minor children, two of whom are her own and five of whom are the children of her two married daughters; both daughters are separated from their husbands and do household or domestic work to support themselves, appellant Berry and the seven minor children. Appellant Berry, like appellant Harper, is disqualified from registering and voting in state elections in Virginia unless she pays three years' back poll taxes, plus the five percent penalty and interest charges—a total of $5.01 (R.4).

Appellant Curtis Burr works in the building and construction industry which is characterized by irregular employment because of varying and uncertain weather conditions; in calendar 1963 his gross income was less than $5,000. Appellant Curtis Burr's entire income is consumed in providing the necessities of life for his wife, appellant Myrtle L. Burr, and their nine children. Although appellant Curtis Burr paid his poll taxes for 1961 and 1962, he did not pay the tax for 1963, and does not expect to be able to pay it hereafter, because of the low earnings received from his employment and the increasing cost of supporting his family, particularly as his children grow older. In any year in which appellant Curtis Burr wishes to register and vote in a state election, he will have to show payment of three years' back poll taxes, plus penalties and interest (R. 4).

Appellant Myrtle L. Burr is supported by her husband, appellant Curtis Burr, whose annual income of less than

---

[2] If a person does no pay his poll tax by December 5, a five percent penalty is incurred, raising the amount due to $1.58. § 58-963, Code of Virginia, 1950. If the tax is not paid by the following June 30, interest at the rate of six percent a year is charged against the principle and penalties. § 58-964, Code of Virginia, 1950. Under the State's requirements, therefore, appellant Harper must pay $5.01 in order to register and vote.

LoneDissent.org

$5000 is entirely consumed in providing the necessities of life for himself, his wife, appellant Myrtle L. Burr, and their nine children. Appellant Myrtle L. Burr, like her husband and appellants Harper and Berry, has been a resident of Virginia for more than three years, but because she has never paid poll taxes, she must pay three years' back taxes, plus penalties and interest, in order to register and qualify to vote in future state elections. If appellant Curtis L. Burr does not pay his poll taxes for 1965, he will have to pay three years' cumulative taxes, plus penalties and interest for both himself and his wife, or a total of $10.02, before they will both be qualified to register and vote (R. 5).

The appellees in this proceeding are the Virginia State Board of Elections, the Electoral Board of Fairfax County, Virginia, and Waneta M. Buckley, the General Registrar of Fairfax County. These are the governmental boards and officers of the State of Virginia and Fairfax County, having the responsibility under Virginia law to enforce the election laws by preventing persons who have not paid their poll taxes from registering for, or voting in state and local elections (R. 3).

The facts of this case are undisputed. The appellants moved for summary judgment on May 26, 1964, and oral argument was heard by the District Court on October 21, 1964.[3] On November 12, 1964, the Court rendered its decision and a final order granting the appellees' motion to dismiss and denying the relief sought by the appellants. The District Court declined to hold the provisions of Virginia law which require the payment of poll taxes as a prerequisite to registering and voting unconstitutional, for the stated reason that it was precluded from doing so by this Court's decision in *Breedlove* v. *Suttles,* 302 U.S. 277.

---

[3] The instant action was consolidated for the purpose of hearing with a similar case (*Butts* v. *Harrison,* Civil Action No. 3346) then pending in the District Court (R.31). No appeal was perfected in that case from the adverse ruling of the District Court.

LoneDissent.org

The District Court also declined to hold the sections of state law barring "paupers" from registering and voting unconstitutional, on the ground that there was no showing of the disqualification being employed to prevent the appellants or members of their class from voting

The ruling of the District Court upholding the constitutionality of the provisions of state law in question and refusing to enjoin their enforcement and execution constitutes the subject of this appeal.

SUMMARY OF ARGUMENT

I.

The provisions of Virginia law requiring payment of poll taxes as a condition of voting in state and local elections are incompatible with controlling constitutional principles. This is made clear by recent decisions of the Court recognizing the high priority which attaches in our democracy to the right to vote. State poll tax requirements also conflict with current understanding of the scope and significance of the Due Process and Equal Protection clauses of the Fourteenth Amendment, as elucidated by the Court.

The Court, in its recent opinion in *Harman* v. *Forssenius,* 380 U.S. 528, noted some of the most frequently-voiced objections to the imposition of a poll tax as a prerequisite to voting. Not the least among these is the disenfranchisement of poor persons resulting from their inability to pay the tax. The Court also noted the historic fact that the Virginia poll tax was adopted as a device to deprive Negroes of the suffrage. Congress likewise has recently expressed its dissatisfaction with poll tax requirements—first, by initiating the Twenty-fourth Amendment which prohibits use of such taxes in federal elections, and second, in the Voting Rights Act of 1965 (P.L. 89-110, 89th Cong. 1st Sess.) which contains a clear congressional statement of opposition to use of the tax in any election.

Voting is the highest form of political expression available to the citizen of a democracy. It is entitled to the same

LoneDissent.org

degree of protection against state abridgement as other forms of expression protected by the First Amendment. The right of free speech, the right to petition the government for redress of grievances, and the right of assembly and association are only of limited value to the citizen if they are not supplemented and secured by the right to vote. The Court has held that a State's imposition of a flat tax as a condition of the exercise of free speech is an unconstitutional abridgement which must fall, by virtue of the First Amendment. A poll tax imposed as a condition of voting equally infringes on the individual's freedom of expression and is no less unconstitutional.

The Virginia poll tax arbitrarily and irrationally interferes with the exercise of the franchise by various classes of the State's citizens, thereby depriving them of equal protection of the laws. Not only are poor persons such as the appellants, discriminatorily denied the franchise, because of their inability to pay one year's tax, but the cumulative feature of the tax further enforces its discriminatory effect. A person who has never paid the tax must pay three years' back taxes, plus penalty and interest charges for late payment, in order to register and vote for the first time. The economic discrimination effected by the poll tax has a particularly heavy impact on Negroes as a class, since a larger proportion of Negroes than whites live at or close to the subsistence level. The decisions of this Court teach that a State may not thus exercise its power to discriminate against classes of its citizens in voting matters.

In addition to the three-year cumulative provision, the discriminatory design of the Virginia poll tax laws is further evidenced by the requirement that in order to vote, one must pay his poll taxes six months before an election, at a time when the candidates have not been selected and the election issues are still undetermined. The structure and administrative scheme of these laws reveal clearly that they were intended to serve the purpose of restricting the franchise. The Virginia Supreme Court of Appeals has ac-

LoneDissent.org

knowledged this to be the case, and that the tax was not intended to be a revenue-raising measure.

There are a number of classes of persons who are exempt from paying the Virginia poll tax, but who are nevertheless permitted to vote. The State thereby creates privileged classes of voters, and deprives those not accorded such favorable treatment of equal protection of the laws. The fact that some classes of persons can vote without paying the tax is additional evidence that payment of the tax is unrelated to one's qualifications to vote. Unlike a literacy test, payment of poll taxes is in no way indicative of a person's fitness or capacity to vote.

Breedlove v. *Suttles,* 302 U.S. 277, which was relied on by the District Court in dismissing the case, cannot be reconciled with more recent decisions of this Court which have emphasized the essential nature of the right to vote and the protections surrounding it by virtue of the Fourteenth Amendment. Nor is justification for present-day use of the poll tax provided by the fact that it has been used by various States since the early history of the country. The tax was originally resorted to as part of a movement to broaden the franchise—to be paid in lieu of property and other tax-paying requirements. The poll tax was not intended to have the disenfranchising effect which motivated its adoption by States in later years. Because of its inconsistency with more recent voting and Fourteenth Amendment cases decided by the Court, the *Breedlove* case should not be deemed controlling herein.

II.

The provision of Virginia law rendering "paupers" ineligible to vote in any election held in the State, is manifestly violative of the Equal Protection Clause. A State may not thus directly disenfranchise the poor as a class. The appellants are entitled to a declaration of unconstitutionality and a decree enjoining the application to them of this

LoneDissent.org

provision of law. By withholding such relief, the District Court erred, for it failed to acknowledge the explicit declarations of the Virginia Attorney General that by virtue of this provision of law, the appellants would be ineligible to vote, even if it were not for the poll tax requirement.

ARGUMENT

I. PROVISIONS OF VIRGINIA LAW WHICH REQUIRE THE PAYMENT OF POLL TAXES AS A PREREQUISITE TO VOTING VIOLATE THE FOURTEENTH AMENDMENT

A. Introduction

The practice by some States of requiring citizens to pay poll taxes as a condition of voting is an anachronism under our constitutional system. It is impossible to justify the practice in the light of decisions by this Court in recent years which have repeatedly emphasized the high priority attaching under our democratic form of government to a free and unabridged right to vote. The Court has also recently given the Due Process and Equal Protection clauses of the Fourteenth Amendment a scope and significance surpassing that which it formerly had. These two lines of judicial authority point to the inescapable conclusion that the poll tax, when made a condition of voting, is an unconstitutional restriction on the exercise of the franchise.

The unfavorable view which the Court takes of the poll tax requirement has already been foreshadowed in *Harman* v. *Forssenius,* 380 U.S. 528, 538-540, where the Court called attention to some of the more objectionable features of this outdated practice, noting specifically the "general repugnance" that is generally felt regarding the "disenfranchisement of the poor occasioned by failure to pay the tax." *Id.* at 539. The Court also cited with respect to the Virginia tax, particularly, the well-documented historical fact that it was born of a specific desire to disenfranchise the Negro. *Id.* at 543-544.

The Court's consideration of the poll tax issue at this time is particularly significant, in that it follows close on

LoneDissent.org

the heels of enactment by Congress of the Voting Rights Act of 1965 (P.L. 89-110, 89th Cong., 1st Sess.) which has as its objective the securing of voting rights for Negroes in areas of the country where discrimination on the basis of race in voting matters has been most common. This congressional action reflects the wide-spread popular discontent which has developed in the country with respect to outmoded and discriminatory election practices which have long been tolerated, but which, it is now realized, constitute major imperfections in our governmental system. Much of the movement for the elimination of arbitrary and irrational abridgments of voting rights has received impetus from this Court's historic pronouncement of the guiding principle, "one person, one vote." *Reynolds* v. *Sims,* 337 U.S. 533, 558, quoting, *Gray* v. *Sanders,* 372 U.S. 368, 381. As part of this evolving public policy, Congress, in the Voting Rights Act of 1965, made the following specific legislative findings (P.L. 89-110, § 10(a)):

> [T]hat the requirement of the payment of a poll tax as a precondition to voting
>
> (i) precludes persons of limited means from voting or imposes unreasonable financial hardship upon such persons as a precondition to their exercise of the franchise.
>
> (ii) does not bear a reasonable relationship to any legitimate State interest in the conduct of elections, and
>
> (iii) in some areas has the purpose or effect of denying persons the right to vote because of race or color.
>
> Upon the basis of these findings, Congress declares that the constitutional right of citizens to vote is denied or abridged in some areas by the requirement of the payment of a poll tax as a precondition of voting. [4]

[4] In implementation of these congressional findings and the declaration of policy, P.L. 89-110 directs the Attorney General to institute in the federal district courts in the name of the United States such actions as are necessary to invalidate state poll tax requirements which conflict with the congressional findings and policy (§ 10(b), (c).)

LoneDissent.org

Prior to the recent voting rights legislation, the poll tax received the specific attention of Congress in 1962, when the Twenty-fourth Amendment was passed and sent to the States for ratification. That amendment, which prohibits use of a tax as a prerequisite to voting in federal elections, was approved by the requisite number of state legislatures, and became effective on February 4, 1964. The Twenty-fourth Amendment was only one of numerous bills to abolish the poll tax which were introduced in Congress between 1939 and 1962.[5] Indeed, during that period, the House of Representatives on five different occasions passed anti-poll tax bills, only to have them die in the Senate as the result of filibusters. Restricting use of the poll tax by means of constitutional amendment was resorted to as a strategy to overcome the point of view held by a number of Senators that a federal statute on the subject could be unconstitutional.[6] Further, the Twenty-fourth Amendment was limited to apply to federal elections only, in order to conform to the opinion of some members of Congress that

---

[5] The legislative history of anti-poll tax proposals from the 75th through the 87th Congresses (1939-1961) is contained in Hearings before Subcommittee No. 5 of the House Committee on the Judiciary, 87th Cong., 2nd Sess. (1962) 29-47. See also Ogden, *The Poll Tax in the South* 243-249 (1958).

[6] See the statement of Senator Holland, the leading congressional sponsor of the Twenty-fourth Amendment. Hearings before Subcommittee No. 5, *supra,* 25. The question of congressional authority to enact an anti-poll tax law has been a subject of controversy for many years. See, e.g., Kallenbach, *Constitutional Aspects of Federal Anti-Poll Tax Legislation,* 45 Mich. L. Rev. 717 (1947); Christensen, *The Constitutionality of National Anti-Poll Tax Bills,* 33 Minn. L. Rev. 217 (1949);

LoneDissent.org

state and local elections should be conducted according to standards set by the States, free from federal control.[7]

At the present time, besides Virginia, three other southern states and a northern state require poll tax payments as a condition of voting. Alabama,[8] Mississippi,[9] and Texas[10] require poll tax payments for all state and local elections, while in Vermont,[11] to be eligible to vote in town elections, town meetings, and school district meetings a person must have paid the "poll and old age assistance taxes" due the

---

[7] Statement of Senator Holland, *supra*. The use of the poll tax as a prerequisite to voting in state and local elections is not rendered constitutional, as the appellees contend, because the reach of the Twenty-fourth Amendment is limited to federal elections, or because Congress chose to initiate a constitutional amendment, rather than resorting to legislation, as a method of dealing with the issue. The Twenty-fourth Amendment was made applicable to federal elections only, and not to state or local elections, because Congress, in initiating the amendment, chose at that time to address itself specifically to the poll tax problem as it related to federal elections, leaving until another day the decision of what, if anything, to do about state and local elections. Moreover, the lack of a constitutional provision in terms barring the poll tax as a voting prerequisite in state and local elections does not validate the practice, if, as the appellants show *infra*, it is otherwise violative of Fourteenth Amendment. To contend otherwise would be the equivalent of suggesting that disenfranchisement of Negroes and women would be permissible today if it were not for the existence of the Fifteenth and Nineteenth Amendments. Manifestly such a position would be untenable, in view of the meaning which is now recognized as attaching to the Fourteenth Amendment.

[8] Alabama Const. (1901), § 178, as amended by Amendments 96, 90, 109 and § 194; Alabama Code (1958), Title 17, § 12, Title 35, §§ 11, 214.

[9] Mississippi Const. (1890), §§ 241, 243; Mississippi Code (1942), §§ 3130, 3160, 3163, 3163-02, 3235.

[10] Texas Const. (1876), Art. 6, § 2; Vernon's Ann. Stat., Election Code, Arts. 5.02, 5.09.

[11] Vermont Stat. Ann., Title 16, § 363, Title 24, §§ 701, 1309, Title 32, §§ 3601, 5011-5023, 5161.

LoneDissent.org

town.[12] The Court's holding in this case, therefore, in addition to its effect on Virginia, will have a significant impact on those other States.

A further major factor in this litigation, the appellants recognize, is that in *Breedlove* v. *Suttles,* 302 U.S. 277, the Court upheld the constitutionality of a Georgia poll tax in a decision which the District Court, at least, considered dispositive herein. The appellants, therefore, in addition to showing below the reasons why the Fourteenth Amendment prevents a State from requiring the payment of poll taxes as a condition of voting, will demonstrate more specifically why *Breedlove* v. *Suttles* should not be deemed controlling with respect to this litigation. In the discussion which follows, it should also be borne in mind that the appellants do not contest Virginia's right to levy a poll tax,[13] as such, but only the requirement that such a tax be paid as a condition of voting.

---

[12] In Alabama and Texas, the annual poll tax is fixed by statute at $1.50, and in Mississippi it is $2.00 (*supra,* ns. 8, 9, 10).

In Vermont, towns and municipalities have authority to set their own annual tax rates, thereby establishing the amount of poll tax each citizen must pay in order to vote (*supra,* n. 11). The poll taxes required to be paid by individuals in various towns in Vermont currently range from $3.50 to more than $18.00. Letter to the Editor by Philip H. Hoff, Governor, State of Vermont, The New York Times, May 28, 1965. Added to the amount of his local poll tax, every person in Vermont must also pay as a prerequisite to voting in local elections a flat tax of $5.00 which is earmarked to be used by "the department of social welfare for old age assistance purposes." Vermont Stat. Ann., Title 32, § 5012.

[13] A "poll tax" by definition (also "capitation" or "head" tax) is a direct uniform tax levied on each head or person. *Webster's Third New International Dictionary* (unabridged, 1961). The term has no reference to the "poll" where voting is conducted.

LoneDissent.org

B. The right to vote is correlative to other rights protected by the First Amendment, and like them, its exercise may not be conditioned on payment of a tax

This Court has stressed on numerous occasions that, "'[t]he right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.' The right is fundamental 'because preservative of all rights.'" *Harman* v. *Forssenius, supra,* 380 U.S. at 537, quoting *Reynolds* v. *Sims, supra,* 377 U.S. at 555, and *Yick Wo* v. *Hopkins,* 118 U.S. 356, 370.[14] The Court has also referred to the right to vote as falling within that class of rights which, like freedom of speech, are "so vital to the maintenance of democratic institutions." *Carrington* v. *Rash,* 380 U.S. 89, 94, quoting *Schneider* v. *State,* 308 U.S. 147, 161. To analogize the right to vote to the right of free speech is appropriate, for voting, in a sense, is free speech in its ultimate and most valued form. The citizen, when he votes, expresses his innermost convictions as to who the leaders of government shall be, and how he believes the political issues of the day should be resolved. One's ability to speak his mind freely in a public park, or to publish his views in printed form without governmental restriction is of little value if he is denied the most esteemed form of political expression in the privacy of the voting booth. Precisely because it is "preservative of all rights," *Yick Wo* v. *Hopkins, supra,* 118 U.S. at 370, the right to vote is deserving of the highest degree of protection against erosion by state action.

If Virginia's poll tax of $1.50 were imposed as a condition of the citizen's exercise of constitutionally protected speech, there is no question but that it would be struck down. *Murdock* v. *Pennsylvania,* 319 U.S. 105; *Jones* v.

---

[14] See also *Gray* v. *Sanders, supra,* 372 U.S. at 379-381; *Wesberry* v. *Sanders,* 376 U.S. 1, 17-18.

LoneDissent.org

Opelika, 319 U.S. 103.[15] There is no reason why a different result should obtain when the payment of such a tax is made the condition of voting. In both instances the State is taxing the citizen's act of expressing himself. As the Court said in the *Murdock* case, "The power to tax the exercise of a privilege is the power to control or suppress its enjoyment." 319 U.S. at 112. See also *Grosjean* v. *American Press Co.,* 297 U.S. 233, 244-251; *Speiser* v. *Randall,* 357 U.S. 513, 518. The right to vote is of little value if it may thus be "indirectly denied . . . or manipulated out of existence," *Harman* v. *Forssenius, supra,* 380 U.S. at 540. Accordingly, taxes exacted as the price of exercising freedoms protected by the Constitution are presumptively invalid, for "[o]n their face they are a restriction of the free exercise of those freedoms . . . " *Murdock, supra,* at 114. They are "as obnoxious as the imposition of a censorship or a previous restraint." *Follett* v. *McCormick,* 321 U.S. 573, 577.

The suggestion that the right to vote is as deserving of the protection of the First Amendment as the right of free speech, is supported by both reason and precedent. The Court has held that the right to pursue social and legal objectives by means of litigation in the courts is a right protected by the First Amendment. *NAACP* v. *Button,* 371 U.S. 415, 429-431; cf. *Brotherhood of Railroad Trainmen* v. *Virginia,* 377 U.S. 1, 5-6. The First Amendment's protection also extends to efforts to obtain a particular

---

[15] The Virginia poll tax, like the taxes in the cited cases is a flat fee. The amount collected is not related to any state regulatory scheme, and it is not used to defray the expense of conducting elections. One dollar of each person's poll tax is designated by the Virginia constitution to be applied "exclusively in aid of the public free schools." The remainder of the tax, as well as penalties and interest charges which must be paid by citizens as a condition of voting, are used to support the general public revenue requirements. § 173, Virginia Constitution. § 58-49, Code of Virginia, 1950. Cf. *Murdock* v. *Pennsylvania, supra,* 319 U.S. at 113-114.

LoneDissent.org

course of action by the legislative or executive branch of government. As the Court has stated, "The right of petition is one of the freedoms protected by the Bill of Rights . . ." *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight,* 365 U.S. 127, 138. In *Edwards* v. *South Carolina,* 372 U.S. 229, 235, Negro students who peacefully assembled at the site of the state government, and there demonstrated and expressed their grievances against laws of South Carolina which allegedly "prohibited Negro privileges in this State" were said by the Court to have engaged in the exercise, in their "most pristine and classic form," of "constitutionally protected rights of free speech, free assembly, and freedom to petition for redress of their grievances." As construed by the Court, the protection of the First Amendment thus plainly extends to the right of the citizen to assert his views by a variety of means against what he conceives to be adverse public policies. He may express his position by means of litigation in the courts, in legislative cloakrooms, in the offices of government officials, and on the State House grounds. It would be ironic, indeed, to deny the same degree of constitutional protection to the citizen's right to express himself with respect to those same public policies, by casting his ballot—the classic and most meaningful mode of expression available in a democratic society.

The act of voting unquestionably partakes both of the nature of speech and petitioning the government for redress of grievances. It is the most significant single direct act available to the citizen as a means of giving voice to his beliefs concerning the affairs of government. Although the right to vote is nowhere mentioned in the First Amendment, the Court has more than once recognized that the protection of that amendment extends beyond its specific words to protect from abridgment concomitant personal rights necessary to make the express guarantees of the provision fully meaningful. *Lamont* v. *Postmaster General,* 381 U.S. 301; *NAACP* v. *Alabama,* 357 U.S. 449, 460;

LoneDissent.org

Griswold v. *Connecticut,* 381 U.S. 479; *NAACP* v. *Button, supra,* 371 U.S. at 430-431; *Thomas* v. *Collins,* 323 U.S. 516; *Martin* v. *City of Struthers,* 319 U.S. 141. Such interpolations have been recognized as necessary in order for the Bill of Rights to fulfill its purpose. *Bolling* v. *Sharpe,* 347 U.S. 497, 499; *Schware* v. *Board of Bar Examiners,* 353 U.S. 232, 239; *Kent* v. *Dulles,* 357 U.S. 116, 125-127; *Aptheker* v. *Secretary of State,* 378 U.S. 500, 505-508; *Meyer* v. *Nebraska,* 262 U.S. 390; *Pierce* v. *Society of Sisters,* 268 U.S. 510, 534-535; *Truax* v. *Raich,* 239 U.S. 33, 41. The Court aptly summarized the case for according similarly protected status to the right to vote when it stated: "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry* v. *Sanders, supra,* 376 U.S. at 17.

Decisions of the Court, as shown by the foregoing discussion recognize that the right to vote is correlative to the rights of free speech and petition which are protected by the First Amendment. Accordingly, the appellants submit, under the doctrine of *Murdock* v. *Pennsylvania, supra,* a State is prohibited by the Fourteenth Amendment from imposing a tax as a condition of voting.

C. Virginia's poll tax laws violate the Fourteenth Amendment, because they discriminate against classes of persons otherwise qualified to vote

The appellants recognize that within the framework provided by our Constitution, the States have "broad powers to determine the conditions under which the right of suffrage may be exercised." *Lassiter* v. *Northampton County Board of Elections,* 360 U.S. 45, 50; *Carrington* v. *Rash, supra,* 380 U.S. at 91. It is equally true, though, that in assessing the validity of limitations on the franchise, we deal "with matters close to the core of our constitutional system. 'The right . . . to choose,' *United States* v.

LoneDissent.org

Classic, 313 U.S. 299, 314, that this Court has been so zealous to protect, means, at the least, that States may not casually deprive a class of individuals of the vote because of some remote administrative benefit to the State." *Carrington* v. *Rash, supra,* 380 U.S. at 96.

The appellants submit that the Virginia poll tax laws are unconstitutional because they result in the "casual deprivation" of the right to vote for many persons in the State. Furthermore, even if it could be assumed that these laws were intended to serve a legitimate purpose, namely, to strengthen and improve the electoral process, it is clear from their nature and structure, that the poll tax provisions are not reasonably designed to accomplish this end. In other words, these laws fail to stand the test of reasonableness and rationality which must be satisfied when a State purports to establish legislative classifications. By means of its poll tax laws, Virginia has sought to classify persons for the purpose of determining voting eligibility. But as this Court has said, legislative classification "must always rest upon some difference which bears a reasonable and just relation to the act in respect to which classification is proposed, and can never be made arbitrarily and without any such basis . . . The courts must reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose . . ." *McLaughlin* v. *Florida,* 379 U.S. 184, 190-191; *Carrington* v. *Rash, supra,* 380 U.S. at 93.

1. Disenfranchisement of the poor

The Virginia Supreme Court of Appeals has supplied the most frequently heard official justification for the State's poll tax. In *Campbell* v. *Goode,* 172 Va. 463, 466, 2 S.E. 2d 456, 457, the court said with respect to the levy that its "imposition was not intended primarily for the production of revenue, but to limit the right of suffrage to those who took sufficient interest in the affairs of the State to qualify themselves to vote." It might be contended that this state-

LoneDissent.org

ment tells something less than the whole truth, indeed, that it is entirely euphemistic, in view of the indisputable evidence that the Virginia poll tax was intended primarily as a device to disenfranchise the Negro.[16] Even accepting at face value, however, the Virginia court's justification for the tax, it is plain that the reason given does not satisfy the constitutional test of rationality. Lengthy discourse is unnecessary to demonstrate the fact that failure to pay the tax is no certain indicator of a citizen's lack of interest in the affairs of government. On the contrary, by conditioning the right to vote on payment of the poll tax, Virginia has disenfranchised members of the large class of economically under-privileged and impoverished persons who both wish to be, and are responsible citizens but who for various reasons cannot afford to pay the required amount.[17]

Plaintiffs are members of the class of persons who are adversely affected in this manner by the poll tax and are

---

[16] *Harman* v. *Forssenius, supra,* 380 U.S. at 543. The Proceedings and Debates of the Virginia Constitutional Convention (1901-1902) clearly reflect the racist appeals made by proponents of the poll tax, at the time of its adoption by the State. Disenfranchisement of the Negro was also undoubtedly the principal reason for adoption of the poll tax by other southern states in the period from 1890 to 1908. Ogden, *supra,* 410. The Mississippi Supreme Court has described the attitude which characterized that State's Constitutional Convention of 1890. In *Ratliff* v. *Beale,* 74 Miss. 247, 266-268, 20 So. 865, 868-869, the court declared that "Within the field of permissible action under the limitations imposed by the federal constitution, the convention swept the circle of expedients to obstruct exercise of the franchise by the negro race. [The tax] was primarily intended by the framers of the constitution as a clog upon the franchise, and seocndarily and incidentally only as a means of revenue."

[17] "The most shiftless of men may pay the tax because he found a five dollar bill in the street. The worthiest citizen may prefer to feed his family . . ." *Christensen,* 33 Minn. L. Rev., *supra,* at 227, n. 53.

LoneDissent.org

thereby prevented from voting. The class of persons who, because of their poverty, are deprived of the right to vote includes, *inter alia,* many individuals who are completely without economic means and are dependent for subsistence on relatives, friends, and in many instances, the public welfare. The disenfranchised class also includes many other persons who have some identifiable income or property, but whose lives are characterized by poverty to such a degree that they cannot afford to pay for other than the necessities of life such as food, clothing, housing, and medical and dental care. Many such individuals are employed in low paying jobs; others are unemployed a substantial part of the time; and others have minimal incomes in the form of social security benefits, retirement pensions, unemployment compensation, medical disability benefits, and the like.[18]

---

[18] An annual income of $3000 is generally considered today to be necessary to meet the minimum current needs of a family of four. *Annual Report of the Council of Economic Advisors to the President, January 1964* 58; Orshansky, *Counting the Poor: Another Look at the Poverty Profile,* Social Security Bulletin, 3, 10, 28, Table E, Vol. 28, No. 1 (January 1965). Census figures for 1960 show 27.9 percent of all families in Virginia having incomes below the $3,000 level, and 17.4 percent of the State's families having incomes below $2000. Demonstrating the commonly known fact that there is a higher proportionate incidence of poverty among Negroes than among white persons, the same Census figures show that 22.4 percent of the white families in Virginia have incomes below the $3000 standard, while among nonwhite families the proportion receiving a substandard income is appreciably greater—54.1 percent. U. S. Dept. of Commerce, *1960 Census of Population, Supplementary Report,* PC (S1)—43. Larger families with more children, of course, have higher minimum income needs than are reflected by the foregoing figures. Thus, for a family of 11, such as that of the appellants Curtis and Myrtle Burr, the boundary of poverty is about $7000—or $2000 more than the Burr's annual income. See *Orshansky, supra,* 28; U.S. Dept. of Labor, Bureau of Labor Statistics, *Estimating Equivalent Incomes or Budget Costs by Family Types,* 83 Monthly Labor Review 1197 (1960).

LoneDissent.org

It is evident, therefore, that while Virginia's Court of Appeals proclaims that the State's only purpose in having the poll tax is to insure that those who vote are interested enough in the affairs of government to qualify themselves by making the required payment, the actual effect of the tax is to disenfranchise the poor as a class. The lack of rational relationship between the purported end sought and the means of accomplishment confirms the unconstitutionality of the tax. Moreover, even it it should be suggested that those who are too poor to pay the tax, should not be entitled to vote,[19] the disenfranchisement which is effected is equally impermissible. Whether the disenfranchisement of the poor which results from tying the poll tax to the ballot is the unintentional result of an otherwise permissible objective, i.e., to strengthen the electoral process, or whether it is a conscious effort to limit the franchise to persons of means, it amounts in either event to the drawing of "an unconstitutional line . . . between rich and poor." *Douglas* v. *California,* 372 U.S. 353, 357. It is settled law that under the Equal Protection Clause, "a State can no more discriminate on account of poverty than on account of religion, race, or color." *Griffin* v. *Illinois,* 351 U.S. 12, 17. Further, because of the economic discrimination effected by the Virginia poll tax, it has a particularly heavy impact on Negroes. A higher percentage of Negroes than whites are inevitably disenfranchised by the tax, because, as shown *supra,* n. 18, a much larger proportion of Negroes than whites in Virginia live at or close to the subsistence level.[20] In sum, it is clear that Virginia's poll tax require-

---

[19] The contention has been made that a State should have the right to restrict suffrage to those who pay poll taxes and thereby contribute financially to the operations of government.

[20] The inferior economic position of Negroes as a class is also shown by 1960 Census data showing that in Virginia the average income of Negroes is only 51 percent of the average income of white persons. Miller, *Rich Man, Poor Man* 99 (1964). Although the appellants did not allege that the Virginia poll tax laws violate

LoneDissent.org

ment inevitably effects "invidious discriminations based upon . . . economic status," thereby violating the Fourteenth Amendment. *Reynolds* v. *Sims, supra,* 377 U.S. at 566.[21]

---

the Fifteenth Amendment, such a violation occurs where, as here, legislation, which on its face treats all races even-handedly, is intended to, and does effect discrimination against Negroes as a group. Negroes in Virginia historically have been the victims of a state-imposed system of segregation which has relegated them to a lower position on the social and economic scale than whites. Public laws and regulations have been utilized in Virginia to maintain racial segregation in such areas of activity as the public schools, recreation facilities, public conveyances, public facilities, housing and voting practices. See, e.g. *Griffin* v. *County School Board of Prince Edward County,* 377 U.S. 218; *Tate* v. *Department of Conservation and Development,* 133 F. Supp. 53 (E.D. Va.), affirmed 231 F. 2d 651 (C.A. 4), certiorari denied, 352 U.S. 838; *Morgan* v. *Virginia,* 328 U.S. 373; *Blackwell* v. *Harrison,* 221 F. Supp. 651 (E.D. Va.); *City of Richmond* v. *Deans,* 281 U.S. 704; *Virginia State Board of Elections* v. *Hamm,* 379 U.S. 19. The segregated society thus fostered by the State's laws has had its foreseeable result in widespread incidence of racially discriminatory employment practices and the relatively lower economic status of Negroes as a class. The burden of the poll tax, therefore, naturally falls more heavily on this group than on whites. In the social and economic environment created by Virginia's segregation laws, the "inescapable human effect" of the poll tax requirement is to "despoil colored citizens" of their voting rights to a greater extent than whites. *Gomillion* v. *Lightfoot,* 364 U.S. 339, 347. As the Court has stated, "The [Fifteenth] Amendment nullifies sophisticated as well as simple-minded modes of discrimination." *Lane* v. *Wilson,* 307 U.S. 268, 275.

[21] Vermont, one of the five states where a poll tax is imposed as a condition of voting, exempts from paying the tax, *inter alia,* persons "actually poor" and persons "receiving old age assistance." Vermont Stat. Ann. Title 32, § 3801. However, an exemption for "paupers" or "poor" persons, assuming there is some means of administering it, obviously does not save a poll tax from invalidity if, as the appellants have argued *supra,* the right to vote is protected against abridgement by state taxation in the same manner as other forms of expression guaranteed by the First Amendment.

LoneDissent.org

2. Additional voter disqualifications resulting from Virginia's poll tax laws

The unconstitutionality of the laws under attack is manifested not only by the economic discrimination resulting from the poll tax itself, but also by the structure and administrative scheme by which the laws function. Thus, by means of its poll tax laws Virginia has imposed arbitrary restrictions and limitations on the exercise of the franchise, resulting in invidious discrimination against the classes of persons adversely affected. As we show below, the determinants of voter eligibility which are established by these laws are no less arbitrary, and irrational and hence, violative of the Fourteenth Amendment than that struck down by the Court in *Carrington* v. *Rash, supra,* 380 U.S. 89, where it was held that a State may not deny the franchise to a person merely because he happens to be in the military service. "Casual" deprivations of the right to vote, as the Court held in that case, are impermissible under our constitutional system. *Id.* at 96.

a. *The requirement that poll taxes be paid for three years cumulatively.* As noted previously (*supra,* pp. 3-5), the Virginia laws contain a cumulative provision, requiring that a person must pay his poll taxes for three years preceding the election in which he wishes to vote.[22] Thus, an individual's eligibility to vote in an election is established by the fact that he performed a certain act, i.e., paid his poll tax, three years earlier. If the tax was paid that year prior to the due date, and timely payment was made each of the two succeeding years, the individual's payment of $4.50 in annual installments over the three-year period establishes his eligibility to vote.[23] In any year that a

---

[22] In Alabama and Mississippi the poll tax is cumulative for the two years preceding an election. See p. 12, *supra.*

[23] Payment of the third year's tax by December 5, establishes one's eligibility to vote in the interim until the following December.

LoneDissent.org

person does not pay his poll tax by the date it is due, a five percent penalty is added (raising to $1.58 the amount due for that year), and after June 30 of the year following the due date, interest at the rate of six percent per year is added to the principle and penalty. The net effect of these provisions is to attach to the ballot price tags of varying amounts—the charge to the voter being determined by his diligence, as well as his ability to pay the tax, plus added penalties and interest, at specified times. It seems evident that whatever right the State has to impose penalties and interest charges on delinquent taxpayers, it may not, under the Fourteenth Amendment, attach arbitrary and varying monetary values to the ballot. To do so, is to discriminate in favor of those who pay the lesser amounts as against those who must pay a higher price for the right to vote.

The discriminatory purpose underlying the three-year cumulative feature of the Virginia poll tax laws is further brought to light by the clause in Section 22 of the State Constitution which provides that the collection of the poll tax assessed against anyone "shall not be enforced by legal process until the same has become three years past due" (*infra,* p. 37). Hence, although the State on the one hand, by means of penalties and interest charges, makes delinquent taxes progressively more difficult to pay, in Section 22 of the Constitution, it in effect disclaims legal responsibility for collecting the taxes until they are three years past due. The history of Section 22 shows that it was not coincidence that the prohibition was included against enforcement of the tax until after it had ceased to relate to voting. Since the purpose of the constitutional convention of 1901-1902 in adopting the poll tax was to restrict the suffrage, the delegates decided not to make

LoneDissent.org

its collection compulsory, for fear of defeating the real object they had in view.[24]

b. *The requirement that poll taxes be paid six months before the election.* To be eligible to vote in a general election in Virginia, a person must pay all poll taxes that he owes at least six months prior to the election.[25] This obviously is an arbitrary and inconvenient deadline for payment of the taxes, and by failing to meet it many persons are disenfranchised at a time when the candidates have not been selected and the election issues are still undetermined.[26] The date has no relation to the efficient functioning of the election machinery, since there are registration procedures which exist entirely apart from the poll tax requirement. The State has permanent registration for all persons previously registered, and new voters may register up to 30 days before an election, provided their poll taxes have been paid by the six-month deadline. §§ 24-67, 24-74, Code of Virginia, 1950; § 20, Virginia Constitution (*infra,* p. 36). When viewed in relation to other evidence of the discriminatory purpose that the Virginia poll tax was intended to serve, the conclusion

---

[24] Ogden, *supra,* 64-65. See also *Campbell* v. *Goode, supra,* 172 Va. 463, 2 S.E. 2d 456. That Virginia has deliberately avoided any compulsion insofar as payment of the poll tax is concerned is also shown by the fact that Section 173 of the State Constitution provides that the poll tax "shall not be a lien upon, nor collected by legal process from, the personal property which may be exempt from levy or distress under the poor debtor's law." And see § 58-50, Code of Virginia, 1950. There is no such exemption for other forms of state taxes, and assessments. § 190, Virginia Constitution; §§ 34-4, 34-5, Code of Virginia, 1950.

[25] In Alabama, Mississippi and Texas, the deadline for poll tax payment is approximately nine months before the general election. *Supra,* p. 12.

[26] Party primary elections for the selection of candidates are held in all instances in Virginia, subsequent to the deadline for payment of poll taxes. § 24-349, Code of Virginia, 1950.

LoneDissent.org

is apparent that the payment deadline was deliberately set six months in advance of the election in order to discourage poll tax payments, rather than to facilitate or encourage them.[27] It cannot be doubted that many persons through inadvertence or lack of diligence let the deadline go by without paying their poll taxes, but when the election draws near and candidates and issues are known, find that they cannot vote because they did not pay their poll taxes on time. This arbitrary provision has a particularly discriminatory effect on less educated persons who are more likely to be unaware of the time when the tax should be paid.[28]

Thus, it is clear that persons may be prevented from voting in Virginia, not solely because they cannot afford to pay the poll tax, but because they do not pay at the right time. By using an arbitrary and irrational time standard as a basis for determining voter eligibilty, the State unquestionably denies the franchise to many otherwise qualified persons. Regardless of whether the six-month deadline for payment of the poll tax, standing alone, would be grounds for attacking the statutory scheme, when viewed in relation to the other discriminatory features of the poll tax laws, the six-month requirement is further evidence of the incompatibility of these laws with the Fourteenth Amendment.

c. *Exemptions.* Pre-payment of poll taxes is not uniformly required as a prerequisite of voting in Virginia. As the result of tax exemptions, there are more favorable conditions of voting eligibility for some classes of persons than for others. Among the several classes of persons exempt from payment of poll taxes, but who are nevertheless entitled to vote in elections held in the State are: members of the armed forces (Art. XVII, Va. Const.;

---

[27] Ogden, *supra,* 50-52.

[28] *Id.* at 45.

LoneDissent.org

§ 24-23.1, Code of Va., 1950); persons pensioned by the State for military service (§ 173, Va. Constitution, § 58-49, Code of Va., 1950); Civil War veterans, their wives and widows (§ 22, Va. Const.); persons moving into the State since January 1 (the assessment date)[29] of the year preceding the election (Op. Va. Atty. Gen. 1963, 80-81); persons honorably discharged from the armed forces since January 1 of the year preceding the election (§ 24-23.2, Code of Va., 1950);[30] and persons reaching the age of 21 after January 1 the year of the election (§ 20, First, Va. Const.; § 24-67(a), Code of Va., 1950; Op. Va. Atty. Gen. 1963, 75).

Virginia's right to create exemptions from its tax laws is undisputed, but when those exemptions place the classes of persons affected in a favored position insofar as eligibility to vote is concerned, it not only results in discrimination between the classes, but further emphasizes the lack of rational relationship between payment of the poll tax and one's capability to vote. Manifestly, payment of the tax is not a qualification for voting if so many classes of persons are permitted to vote without paying it. The fact that there are numerous exemptions also provides further demonstration of the lack of validity to the rationale of *Campbell* v. *Goode, supra,* i.e. that payment of the poll tax is indicative of a person's interest in government. There is no reason for assuming that the widow of a Civil War veteran, who does not have to pay the tax in order to vote, is any more interested in the affairs of government than, for instance, appellant Curtis Burr who cannot afford to pay the requisite amount.

---

[29] § 58-4, Code of Virginia, 1950.

[30] There is no prohibition under Virginia law against voting by a dishonorably discharged veteran of the armed forces; except, he must pay the poll tax. Cf. *Carrington* v. *Rash, supra,* where the entire class of military personnel was placed under a disability by the State's voting laws, rather than as in Virginia where only part of the class—those with dishonorable discharges—is penalized.

LoneDissent.org

D. The Court's decision herein should not be controlled by the holding in Breedlove v. Suttles

In the preceding discussion it has been shown that the Virginia requirement that poll taxes be paid as a prerequisite of voting in state and local elections is invalid under the Due Process and Equal Protection clauses of the Fourteenth Amendment. The principal remaining question concerns the relation to this case of the 1937 decision in *Breedlove* v. *Suttles,* 302 U.S. 277, which the District Court held was controlling here. It is hardly necessary to point out the difficulty, if not the impossibility, of reconciling the point of view reflected in the *Breedlove* opinion with the more recent decisions of the Court which have laid great stress on the preferred status of the right to vote and the protections accorded it under the Constitution. The *Breedlove* case was decided prior to the reapportionment and voting rights cases beginning with *Baker* v. *Carr,* 369 U.S. 186, and also prior to the line of authority represented by *Griffin* v. *Illinois, supra,* and *Douglas* v. *California, supra,* holding that under the Equal Protection Clause persons may not be discriminated against on economic grounds. Accordingly, with due respect to the Court, the appellants believe that *Breedlove* fails to reflect accurately the current state of the law. Furthermore, the Court in *Breedlove* showed a preoccupation with the question of whether voting is a privilege or immunity of national citizenship, and concluding that it was not, treated the Georgia poll tax laws as merely a permissible exercise of the State's taxing power.[31]

The keystone of the decision in *Breedlove* is the Court's declaration that the "[p]rivilege of voting is not derived from the United States, but is conferred by the State." 302 U.S. at 283. As the Court subsequently pointed out, however, this statement is true only in a "loose sense." *United States* v. *Classic, supra,* 313 U.S. at 315. In the

[31] The Georgia poll tax was repealed in 1945. Ogden, *supra,* 185.

LoneDissent.org

Classic case, indeed in *Breedlove* itself, the Court acknowledged that a State's authority to grant or restrict the right of suffrage is circumscribed both by congressional authority to legislate on the subject, as well as other limitations embodied in the Constitution. In the *Breedlove* opinion the Court specifically noted that the Fifteenth and Nineteenth Amendments constitute restraints on state action with respect to voting laws. The Court gave scant weight, however, to what is now settled beyond peradventure, namely, that the Fourteenth Amendment likewise places definable limitations on state abridgment of voting rights. *Baker* v. *Carr, supra; Carrington* v. *Rash, supra.*[32]

In *Lassiter* v. *Northampton County Board of Elections, supra,* 360 U.S. at 50-51, the Court restated the guiding principle in somewhat modified form as follows: "The

---

[32] It has been suggested that whatever is the case with regard to federal elections, the right to vote in state and local elections, particularly, derives solely from the State. If true, this would make a nullity of Article IV, Sec. 4 of the Constitution, under which the United States guarantees to every State "a republican form of government." As the Court noted in *Baker* v. *Carr, supra,* 369 U.S. at 226, although cases raising the bare question of what constitutes a republican form of government have traditionally been dismissed as nonjusticiable, where the question "is the consistency of state action with the Federal Constitution," federal courts have the power to inquire into matters otherwise within the State's domain. The plain meaning of the Guaranty Clause indicates, at the very least, that a State may not exercise its authority over the franchise in such a way as to abolish the right to vote, and thereby do away with the republican form of government within its borders. State action with respect to voting rights, therefore, is not insulated from judicial review by the assertion that voting is not a privilege or immunity of national citizenship. By virtue of the Guaranty Clause, there is an underlying federal protection of the right to vote at the state level, and where, as here, violations are alleged of rights which, under the Fourteenth Amendment, are "well developed and familiar," it is open to the courts to determine the merits of the claim. *Ibid.*

LoneDissent.org

States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised, absent of course the discrimination which the Constitution condemns."[33] The Court held in the *Lassiter* case that although a State has "wide scope for exercise of its jurisdiction," standards of reasonableness and rationality must be adhered to "in determining the qualifications of voters." 360 U.S. at 51. The appellants have already shown the discriminatory and irrational nature of the Virginia poll tax laws. Suffice it to say here, that payment of the poll tax obviously is not a test of a person's qualifications to vote within the meaning of the *Lassiter* case, for unlike the voter literacy test at issue there, the poll tax is completely unrelated to fitness or capacity to participate in public affairs. This is what distinguishes use of the tax today as a prerequisite to voting from its historic use which was cited by the Court in *Breedlove* as a basis for sustaining the constitutionality of the Georgia tax.

In the Colonial period in this country, property and tax-paying requirements imposed as a condition of voting were intended to be indices of education and status, and of one's stake in the community. During the late 18th and early 19th centuries, however, the poll tax came into use as a prerequisite to voting as part of a movement of extending the franchise to a larger number of people; payment of the tax was made a condition of voting in lieu of property

---

[33] The Court, in *Lassiter,* also summarized the provisions of the Constitution from which the States derive their authority in election matters, including Article I, Sec. 2 and Seventeenth Amendment which provide that the electors in each State for members of the House of Representatives and Senate "shall have the qualifications requisite for electors of the most numerous branch of the state legislature."

LoneDissent.org

or other taxpaying qualifications.[34] Ultimately, however, the poll tax requirement fell into disuse, and by the time of the Civil War it was virtually extinct.[35] In sum, although the tax originally signified an expansion of the suffrage—a democratizing move—as previously shown, following the Reconstruction, it was resorted to again, but then as a device to restrict suffrage. Moreover, by that time, the characteristics of a mobile and industrial society had rendered the poll tax useless as a test of political capacity.[36]

Contrary to the impression gained from the Court's decision in the *Breedlove* case (302 U.S. at 283-284), as shown by the foregoing summary, history provides little justification for the poll tax as a prerequisite to voting. The Court's opinion in *Breedlove* similarly, in the appellants' view, contains a misleading discussion of the validity of the tax as an exercise of the State's taxing power. For, rather than identifying the tax for what it is—a clog on the franchise[37]—the Court merely treats its exaction before registration and voting as a permissible device which

---

[34] New Hampshire was the only state with a poll tax as a voting prerequisite at the time the Constitution was adopted. See, Porter, *A History of Suffrage in the United States,* 1-46 (1918); Note, 53 Harv. L. Rev. 645, 646-647 (1940). The requirements for voter eligibility contained in the constitutions and colonial charters of the original 13 States are set forth in Hearings before Subcommittee of the Senate Committee on the Judiciary on S. J. 25, 83rd Cong., 2nd Sess. (1954) 9-16.

[35] Porter, *supra,* 111; 53 Harv. L. Rev., *supra* at 647.

[36] Compare the standard voting qualifications in most States today, such as age, citizenship and residence, which are valid tests of capacity to participate in public affairs.

[37] The Court finds that the Georgia tax was not imposed "for the purpose of denying or abridging the privilege of voting" (302 U. S. at 282). This contrasts with the express acknowledgment of the court in *Campbell* v. *Goode, supra,* that the Virginia tax was intended to restrict the suffrage, and not to raise revenue.

LoneDissent.org

"serves to aid collection from electors desiring to vote."[38] 302 U.S. at 283. The opinion in the *Breedlove* case, in short, in addition to failing to accord due recognition to the inherently restrictive effect that the poll tax has on the exercise of the franchise, does not take into account the overriding effect on state voting laws of the limitations imposed by the Constitution, principally the Fourteenth Amendment. For all of the foregoing reasons, the appellants submit, the *Breedlove* decision should not be adhered to, and should not control the determination of this case.

II. PROVISIONS OF VIRGINIA LAW WHICH DISQUALIFY "PAUPERS" FROM REGISTERING AND VOTING ARE INVALID UNDER THE FOURTEENTH AMENDMENT

In their complaint in the District Court, the appellants, in order to establish their standing to challenge the Virginia poll tax laws, alleged that they wished to register and vote and that they were qualified to do so in all respects, except that they lacked the economic means to pay the poll taxes required of them by the laws of Virginia. Allegations were included in the complaint to substantiate the appellants' claim of poverty, and pursuant to applications made to the District Court, the appellants were granted leave to proceed in *forma pauperis* (R. 1). In pleadings filed by appellees, the defense was raised that the appellants lacked standing to challenge the constitutionality of the poll tax, because on the basis of their own admissions it appeared that they were "paupers," and that they were hence disqualified from voting under the Virginia constitutional and statutory provisions specifying persons of this description as being ineligible to

---

[38] Citing *Mangano Co.* v. *Hamilton,* 292 U.S. 40, 44. However, a State may not use its taxing power to accomplish ends which are beyond its constitutional authority. *Child Labor Tax Case,* 259 U.S. 20, 38-44; *Hill* v. *Wallace,* 259 U.S. 44, 67-68; *United States* v. *Constantine,* 296 U.S. 287, 295-296; Cf. *United States* v. *Kahriger,* 345 U.S. 22, 31, n. 10, 37-38 (dissenting opinion of Justice Frankfurter).

LoneDissent.org

register or vote in the State. The appellants thereupon, with leave of the District Court, amended their complaint to allege the unconstitutionality of Section 23 of the Constitution of Virginia and Section 24-18 of the Virginia Code, insofar as they name "paupers" among the classes of persons disenfranchised.

The unconstitutionality of the pauper disqualification in the Virginia election law cannot be seriously disputed. As shown *supra,* pp. 18-22, the State, by requiring poll tax payments as a prerequisite to voting, denies the franchise to many persons who lack the economic means to pay the tax. As if to emphasize this unconstitutional delineation "between rich and poor," *Douglas* v. *California, supra,* 372 U.S. at 357, the State has also specifically excluded "paupers" from exercise of the suffrage. This provision is so manifestly discriminatory and therefore invalid under the Fourteenth Amendment as to be unworthy of extended discussion. *Douglas* v. *California, supra; Griffin* v. *Illinois, supra; Carrington* v. *Rash, supra.*[39]

The appellees, before the District Court, offered no justification or defense for the "pauper" disqualification. Nor did they supply any definition of what limits there are to the class covered by this vague and indefinite term. The Virginia Attorney General, however, who represented the appellees, maintained throughout the lower court proceeding that the disqualification is "valid, constitutional and enforceable," and that as a result of their admission of poverty, the appellants come within the meaning of the term and are accordingly ineligible to vote in the State (R. 25, 27-30).

---

[39] Justice Harlan, in his dissenting opinion in *Douglas* v. *California,* noted in words applicable to the "pauper" disqualification that "The States, of course, are prohibited by the Equal Protection Clause from discriminating between 'rich' and 'poor' *as such* in the formulation and application of their laws." (Emphasis in original). 372 U.S. at 361.

LoneDissent.org

With the issue thus joined, the appellants submit that the District Court erred in dismissing the complaint with respect to this phase of the case. The assertion by the State that the disqualification applies to the appellants creates sufficient threat that they will be discriminatorily denied the franchise, to warrant a judicial declaration, as prayed for, that the provision is unconstitutional, as well as injunctive relief to restrain its enforcement. It is no answer to say, as the District Court did, that the appellants are without standing to challenge the "pauper" disqualification, because of the lack of showing that it has been employed in the past to prevent them or members of their class from voting. The record of this case shows that not only the poll tax requirement, but also the "pauper" disqualification, as construed by the State's Attorney General, are absolute barriers to exercise of the franchise by the appellants and members of their class. Even if the poll tax is held by this Court to be unconstitutional, the Attorney General's contention that these appellants fall within the definition of "pauper" will presumably be raised as a bar to their voting in future elections—both federal and state—since the disqualification is applicable to both kinds of elections. This threat of irreparable and continuing denial of voting rights warrants the granting of the equitable relief prayed for. *Pierce* v. *Society of Sisters, supra,* 268 U.S. at 534, 536; *Terrace* v. *Thompson,* 263 U.S. 197, 214, 215; *Truax* v. *Raich, supra,* 239 U.S. at 39. Further, a suit contesting the constitutionality of a state election law is particularly appropriate for adjudication under circumstances such as are posed here, for once an election occurs, there is no chance of retrieving the right which has been lost, and the possibility of mootness becomes a threat to the success of subsequent litigation. Cf. *Shub* v. *Simpson,* 340 U.S. 861, 862 (dissenting opinion); *Mills* v. *Green,* 159 U.S. 651; *Love* v. *Griffith,* 266 U.S. 32.

LoneDissent.org

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court below should be reversed.

LAWRENCE SPEISER
ALLISON W. BROWN, JR.
c/o American Civil Liberties Union
Suite 803, 1101 Vermont Avenue, N. W.
Washington, D. C. 20005
Attorneys for Appellants

Of Counsel:

IRA M. LECHNER
PHILIP SCHWARTZ

September 1965.

LoneDissent.org

APPENDIX

The provisions of the Virginia Constitution which are involved (in relevant part) are as follows:

Section 18. Qualifications of voters.—Every citizen of the United States, twenty-one years of age, who has been a resident of the State one year, of the county, city or town, six months, and of the precinct in which he offers to vote, thirty days, next preceding the election in which he offers to vote, has been registered, and has paid his State poll taxes, as hereinafter required, shall be entitled to vote for members of the General Assembly and all officers elective by the people; * * *

Section 20. Who may register.—Every citizen of the United States, having the qualifications of age and residence required in section eighteen, shall be entitled to register, provided:

First. That he has personally paid to the proper officer all State poll taxes legally assessed or assessable against him for the three years next preceding that in which he offers to register; or, if he came of age at such time that no poll tax shall have been assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents, in satisfaction of the first year's poll tax asessable against him; * * *

Section 21. Conditions for voting.—A person registered under the general registration of voters during the years nineteen hundred and two and nineteen hundred and three, or under the last section, shall have the right to vote for all officers elective by the people, subject to the following conditions:

That unless exempted by section twenty-two, he shall, as a prerequisite to the right to vote, personally pay, at least six months prior to the election, all State poll taxes assessed or assessable against him, under the Constitution,

LoneDissent.org

during the three years next preceding that in which he offers to vote. * * *

Section 22. Persons exempt from payment of poll tax as condition of right to vote.—No person, nor the wife or widow of such person, who, during the late war between the States, served in the army or navy of the United States, or of the Confederate States, or of any State of the United States, or of the Confederate States, shall at any time be required to pay a poll tax as a prerequisite to the right to register or vote. The collection of the State poll tax assessed against anyone shall not be enforced by legal process until the same has become three years past due.

Section 23. Persons excluded from registering and voting.—The following persons shall be excluded from registering and voting: Idiots, insane persons and paupers; persons who, prior to the adoption of this Constitution, were disqualified from voting, by conviction of crime, either within or without this State, and whose disabilities shall not have been removed; persons convicted after the adoption of this Constitution, either within or without this State, of treason, or of any felony, bribery, petit larceny, obtaining money or property under false pretenses, embezzlement, forgery or perjury; persons who while citizens of this State, after the adoption of this Constitution, have fought a duel with a deadly weapon, or sent or accepted a challenge to fight such a duel, either within or without this State, or knowingly conveyed such a challenge, or aided or assisted in any way in the fighting of such duel.

Section 38. Duties of treasurers, clerks of circuit and corporation courts and sheriffs in regard to making, filing, delivering and posting list of paid poll taxes; how corrected.—The treasurer of each county and city shall, at least five months before each regular election, file with the clerk of the circuit court of his county, or of the corporation court of his city, a list of all persons in his county or city, who have paid not later than six months prior to such

LoneDissent.org

election, the State poll taxes required by this Constitution during the three years next preceding that in which such election is held; which list shall be arranged alphabetically, by magisterial districts in the counties, and in such manner as the General Assembly may direct in the cities, shall state the white and colored persons separately, and shall be verified by the oath of the treasurer. The clerk, within ten days from the receipt of the list, shall make and certify a sufficient number of copies thereof, and shall deliver one copy for each voting place in his county, or city, to the sheriff of the county or sergeant of the city, whose duty it shall be to post one copy, without delay, at each of the voting places, and, within ten days from the receipt thereof, to make return on oath to the clerk, as to the places where and dates at which said copies were respectively posted, which return the clerk shall record in a book kept in his office for the purpose; and he shall keep in his office, for public inspection, for at least sixty days after receiving the list, not less than ten certified copies thereof, and also cause the list to be published in such other manner as may be prescribed by law. The original list returned by the treasurer shall be filed and preserved by the clerk among the public records of his office for at least five years after receiving the same.

Within thirty days after the list has been so posted, any person who shall have paid his capitation tax, but whose name is omitted from the certified list, may after five days' written notice to the court of his city, or to the judge thereof in vacation, to have the same corrected and his name entered thereon, which application the court or judge shall promptly here and decide.

The clerk shall deliver, or cause to be delivered, with the poll books, at a reasonable time before every election, to one of the judges of election of each precinct of his county or city, a like certified copy of the list, which shall be conclusive evidence of the facts therein stated for the

LoneDissent.org

purpose of voting. The clerk shall also, within sixty days after the filing of the list by the treasurer, forward a certified copy thereof, with such corrections as may have been made by order of the court or judge, to the officer designated by law, who shall charge the amount of the poll taxes stated therein to such treasurer, unless previously accounted for.

Further evidence of the prepayment of the capitation taxes required by this Constitution, as a prerequisite to the right to register and vote, may be prescribed by law.

* * * * * * * * * *

The provisions of the Virginia statutes (1950 Code, as amended) which are involved (in relevant part) are as follows:

Section 24-17. Persons entitled to vote at all general elections.—Every citizen of the United States twenty-one years of age, who has been a resident of the State one year, of the county, city or town, six months, and of the precinct in which he offers to vote thirty days next preceding the general election, in which he offers to vote, has been duly registered under the provisions of Section 24-67, and who, at least six months prior to such election in which he offers to vote, has personally paid to the proper officer all State poll taxes assessed or assessable against him for the three years next preceding the year in which such election is held, and is otherwise qualified, under the Constitution and laws of this State, shall be entitled to vote for members of the General Assembly and all officers elective by the people.
* * *

Section 24-18 Persons disqualified from registering and voting.—The following persons shall be excluded from registering an dvoting: Idiots, insane persons and paupers; persons who, prior to the adoption of the Constitution, were disqualified from voting by conviction of crime, either within or without the State, and whose disabilities shall not have been removed; persons convicted after the adoption of the Constitution, either within or without this State,

LoneDissent.org

of treason, or of any felony, bribery, petit larceny, obtaining money or property under false pretenses, embezzlement, forgery or perjury; persons who, while citizens of this State since the adoption of the Constitution, have fought a duel with a deadly weapon, or sent or accepted a challenge to fight such duel, either within or without this State, or knowingly conveyed a challenge, or aided or assisted in any way in the fighting of such duel. * * *

Section 24-22. Qualifications of voters at special elections.— The qualifications of voters at any special election shall be such as are hereinbefore prescribed for voters at general elections, but at any such special election, held before the second Tuesday in June in any year, any person shall be qualified to vote who was so qualified at the last preceding regular November election, or who is otherwise qualified to vote, and has personally paid, at least six months prior to the second Tuesday in June of that year, all State poll taxes assessed or assessable against him during the three years next preceding that in which such special election is held, and at any such special election, held on or after the second Tuesday in June in any year, any person shall be qualified to vote who is or was qualified to vote at the regular election held on the Tuesday after the First Monday in November of that year. * * *

Section 24-67. Who to be registered for all elections.— (a) Each registrar shall register pursuant to the provisions of this paragraph every citizen of the United States, of his election district, who shall apply in person to be registered at the time and in the manner required by law, who at the time of the next general election, shall have the qualifications of age and residence required in Section 18 of the Constitution of Virginia, and who has paid to the proper officer all State poll taxes assessed or assessable against him for the three years next preceding the year in which such election is held, or if he come of age at such time that no poll taxes shall be assesable against him for

LoneDissent.org

the year preceding the year in which he offers to register, has paid one dollar and fifty cents in satisfaction of the year's poll tax assessable against him. * * *

Section 24-120. Treasurer to file lists with clerk.—The treasurer of each county and city shall, at least five months before the second Tuesday in June in each year in which a regular June election is to be held in such county or city, and at least one hundred and fifty-eight days before each regular election in November, file with the clerk of the circuit court of his county or the corporation court of his city (1) a list of all persons in his county or city who have filed certificates of residence under section 24-172, and (2) a separate list of all persons in his county or city who have paid not later than six months prior to each of such dates the State poll taxes required by the Constitution of this State during three years next preceding that in which such election is to be held, which lists shall state the white and colored persons separately, if known, and shall be verified by the oath of the treasurer. The treasurer shall, in each such list, designate as a tribal Indian any person who requests to be so designated and who shall have furnished the treasurer with an affidavit, made by the Chief of any Indian tribe existing in this State, that such person is a member of such tribe and to the best knowledge and belief of the Chief is a tribal Indian as defined in Section 1-14 of the Code of Virginia. * * *

LoneDissent.org