

Supplementary Material

Chapter 8: The New Deal/Great Society Era—Democratic Rights/Voting

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**The Congressional Debate over Poll Taxes (1942)<sup>1</sup>**

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*During the 1940s, many liberal reformers sought federal legislation outlawing poll taxes in federal elections. Proponents insisted that property and tax restrictions on the franchise had nothing to do with the qualifications of voters, abridged the constitutional right to vote, and were means for discriminating against persons of color. Opponents responded that poll taxes were legitimate means for insuring that voters had the necessary stake and interest in elections, and that the Constitution did not permit the federal government to determine the qualification for the electorate, and that bans on poll taxes violated state sovereignty. Bans on poll taxes frequently passed the House of Representatives, but did not survive southern filibusters in the Senate.*

*The majority and minority report excerpted below disputed whether poll taxes are properly considered voting qualifications. Who has the better of the argument? For what reason? Might Congress have more flexibility determining what constitutes a legitimate voting qualification than the federal courts?*

Majority Report

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The qualification of a voter is generally believed to have something to do with the capacity of a voter. We think it will be admitted by all that no State, or State legislature, would have the constitutional authority to disqualify a voter otherwise qualified to vote, by setting up a pretended "qualification" that in fact has nothing whatever to do with the real qualification of the voter. No one can claim that the provision of the Federal Constitution above quoted would give a legislature the right to say that no one should be entitled to vote unless, for instance, he had red hair, or had attained the age of 100 years, or any other ratification pretended qualification which, in fact had nothing to do with the capacity or real qualification of the voter.

The evil that the legislation seeks to correct is in effect that in taking advantage of the constitutional provision regarding qualifications [Article I, section 2], the States have no right to set up a perfectly arbitrary and meaningless pretended qualification which, in fact, is no qualification whatever and is only a pretended qualification by which large numbers of citizens are prohibited from voting simply because they are poor. Can it be said, in view of the civilization of the present day, that a man's poverty has anything to do with his qualification to vote? Can it be claimed that a man is incapacitated from voting simply because he is not able to pay the fee which is required of him when he goes to vote? In other words, when States have prevented citizens from voting simply because they are not able to pay the amount of money which is stipulated shall be paid, can such a course be said to have anything to do with the real qualifications of the voter? Is it not a plain attempt to take advantage of this provision of the Constitution and prevent citizens from voting by setting up a pretended qualification which, in fact, is no qualification at all?

We believe there is no doubt that the prerequisite of the payment of a poll-tax in order to entitle a citizen to vote has nothing whatever to do with the qualifications of the voter, and that this method of disfranchising citizens is merely an artificial attempt to use the language of the Constitution, giving the

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<sup>1</sup> Excerpt taken from Senate Committee on the Judiciary, *Amending an Act to Prevent Pernicious Political Activities*, 77<sup>th</sup> Cong., 2d Sess. (1942), Senate Report No. 1662.

State power to set up qualifications, by using other ratification means and methods which in fact have no relation whatever to qualifications.

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The pretended poll-tax qualification for voting has no place in any modern system of government. We believe it is only a means, illegal and unconstitutional in its nature, that is set up for the purpose of depriving governmental affairs by denying them a fundamental right—the right to vote.

The requiring of a citizen to pay a poll tax before he can vote is in effect the requiring of the payment of money to exercise the highest “qualification” of citizenship. It is in effect taxing a Federal function. The most sacred and highest of all Federal functions is the right to vote. It is not within the province of a State, or its legislature, to fix a fee or tax which a voter must pay in order to vote and try, in this way, to come within the Federal Constitution by calling this a qualification.

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One might add that, since voting is one of the fundamental governmental rights, the right to tax this fundamental privilege by a State would be giving to the State the power to destroy the Federal Government. No State can tax any Federal function. This is a proposition which will have to be admitted by all and, if this Federal function—the right to vote—can be taxed by a State, then the State has a right to destroy this Federal function which is, after all, the foundation of any government. As a matter of self-preservation, the Congress in order to save the Federal Government from possible destruction, must have the right to prevent any State authority from destroying this cornerstone of the Government itself.

The right to vote for Members of Congress is a right, as the Supreme Court has said, granted under the Constitution of the United States and, therefore, any law, constitutional or statutory, of a State which taxes this fundamental privilege is contrary to the provisions of the Federal Constitution. It could be said, of course, if these poll-tax laws are unconstitutional, they could be taken to the Supreme Court and there challenged directly and that a law of Congress is therefore unnecessary to protect this constitutional right. This is undoubtedly correct but it does not follow that, when the Congress of the United States has had brought to its attention these poll-tax laws by which millions of our citizens are in effect deprived of their right to vote, that it would not be the duty of Congress itself to pass the necessary legislation to nullify such unconstitutional State laws. Most of these people are deprived of their right to vote by these poll-tax laws which are a method of taxation. As a rule they are poor people and are unable to vote because they are poor. The very fact that it is this class of people whose rights are being taken away makes it clear that they could not rely upon their constitutional rights of carrying their cases to the Supreme Court of the United States. The expense would be absolutely prohibitive and it is therefore the duty of Congress to protect these millions of citizens in their most sacred right as citizens—the right to vote.

We think a careful examination of the so-called poll tax constitutional and statutory provisions, and an examination particularly of the constitutional conventions by which these amendments became a part of the State laws, will convince any disinterested person that the object of these State constitutional conventions, from which emanated mainly the poll-tax laws, were moved entirely and exclusively by a desire to exclude the Negro from voting. They attempted to do this in a constitutional way but, in order to follow such a course, they deemed it necessary to even prohibit the white voter the same as they did the colored voter and hence they devised the poll-tax method which applied to white and colored alike. In other words, the poll-tax laws were prohibitive to all people, regardless of color, who were poor and unable to pay the poll tax.

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Near the conclusion of the [Virginia constitutional] convention, Senator [Carter] Glass delivered [an] address in which he referred to the work already performed by the convention. He said:

I declared . . . that no body of Virginia gentlemen could frame a constitution so obnoxious to my sense of right and morality that I would be willing to submit its fate to 146,000 ignorant Negro voters [great applause] whose capacity for self-government we have been challenging for 30 years past.

There is no doubt but what Senator Glass stated the real object the convention had in view. The fact that his remarks were received with great applause indicates that his fellow members of that convention agreed with him and that the real object they had in view, and which they believed they could accomplish, was disfranchising "146,000 ignorant Negro voters."

Under the circumstances, can there be any doubt when perhaps the greatest leader of all stated what the object was and what was expected to be accomplished by the so-called poll tax laws? If we concede that this was the object of the law, then we admit it is unconstitutional because, if this was the effect of the law, it in fact made an artificial qualification which, in itself, is illegal and unconstitutional, in order to come in under the qualification clause of section 2, article I, of the Constitution.

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Those who believe the proposed legislation is unconstitutional rely on the statement of a historical fact that, when the Constitution was adopted, all of the original States had property or tax qualifications. This ignores entirely the testimony of scholars which clearly demonstrates why that fact alone does not prove the right of Congress today to forbid such requirements for voting in Federal elections. It seems to us that this regulation is subject to the criticism which Justice Holmes leveled against the use of history when he said:

It is revolting to have no better reason for a rule of law than that it is laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished lone since and the rule persists from blind imitation of the past. . . .

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It is quite clear that the so-called poll-tax laws do abridge the privileges and immunities of citizens of the United States. If any citizen of the United States is deprived of the privilege of voting by any of these poll-tax laws, it seems a clear abridgment of the privileges of citizens of the United States. One of the greatest privileges, and a fundamental one, of every citizen of the United States is the right to vote. If he is deprived of this right, he is denied the right to participate in governmental affairs. Such a citizen becomes an outcast. He is subject to all the laws of the State. His citizenship is admitted and the burdens which rest upon him are the same as rest upon all other citizens. He can be drafted into the Army and be compelled to face the foe and give up his life to protect the lives of his fellow citizens. Yet he is deprived of the most sacred privilege of all—the right to vote. It is quite evident that all these poll-tax laws are in direct violation of section 1 of the fourteenth amendment to the Constitution as well as being in violation of other constitutional and Federal laws heretofore referred to.

#### Minority Views

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Distasteful from the point of view of popular sovereignty as may be State statutes which make the payment of a poll tax a prerequisite to voting, any attempt by the Congress to abolish such a tax, even in election to Federal office, would seem to be a clear violation of the Federal Constitution and beyond the power of Congress. This is a reform which may and, which if desired, should be effected by constitutional amendment.

If Congress has the right, by statute, to strike down a qualification for voting legally prescribed by a State, then it also has the power to impose additional qualifications. If it has the right to broaden the qualifications for voting in Federal elections, then it also has the right to narrow them. But the Constitution clearly prohibits such a result, for it provides in section 2 of article I that the electors who are to choose the members of the National House of Representatives "shall have the qualifications requisite for electors of the most numerous branch of the State legislature." Obviously, if Congress should attempt to say that some electors qualified to vote for members of the most numerous branch of a State legislature should not be permitted to vote for members of the National House of Representatives, it would be an open violation of the Constitution. Likewise, if it attempts, as this bill does, to say that persons who are not qualified to vote for members of the most numerous branch of a State legislature, may nevertheless vote for Federal offices, including Members of Congress, it would be equally in violation of the fundamental law.

It is acknowledged by the proponents of this bill that Congress has no power to fix or alter the qualifications of voters for State office and so, they propose only to abolish the poll tax for election of Federal officials. To do this, they must deny that a poll tax is a qualification." Otherwise, they would be forced to admit an attempt to disregard section 2 of article I. This they cannot do without conceding the unconstitutional character of the bill. So they adopt the ingenious ruse of declaring in the first section of the measure that the poll-tax requirement is not a qualification of voters but an interference with the manner" of holding a Federal election and as such subject to regulation by Congress under section 4, article I. Here, however, they are met by the historic fact that when the Constitution was adopted all of the original States had property or tax qualifications for voters.

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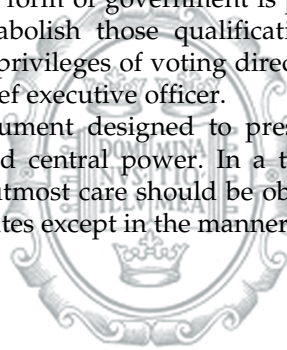
Property qualifications and poll taxes are outmoded. Universal when the Government was formed, they have been abolished now in all of the States save eight, but they were abolished by the action of the people of the States themselves without compulsion from Federal authority.

It is better to wait the wise action of the remaining States than by a strained construction of the Constitution to apply by statute the power of the Central Government to force upon any State a particular course of action in a field which the Constitution left to the States.

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... That the framers of the Constitution did not regard property or poll-tax qualifications as in any sense in derogation of a republican form of government is proven by the fact that when they wrote section 4 of article IV they did not abolish those qualifications in Federal elections. Indeed, they undertook to deprive all citizens of the privileges of voting directly for President by putting the electoral college between the people and their chief executive officer.

The Constitution was an instrument designed to preserve a balance between the State and Federal Government, between local and central power. In a time when circumstances compelled the exercise of great central authority, the utmost care should be observed not to strike down unnecessarily the sovereign powers reserved to the States except in the manner carefully pointed out in the Constitution itself.



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