William & Mary Law Review

Volume 8 (1966-1967)
Issue 1

Article 10

October 1966

Constitutional Law - The Poll Tax. Harper v. Virginia State Board of Elections, 86 S. Ct. 1079 (1966)

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Constitutional Law—THE POLL TAX. In *Harper* v. *Virginia State Board of Elections*,[1] the petitioners questioned the constitutional validity of Virginia's poll tax.[2] The case had been dismissed by the District Court for the Eastern District of Virginia[3] and on appeal to the United States Supreme Court, the poll tax was declared unconstitutional as inconsistent with the equal protection clause of the Fourteenth Amendment. The Court stated that once the right to vote is granted to the electorate: 1) lines may not be drawn which are inconsistent with the equal protection clause; 2) the poll tax is a form of discrimination; and 3) wealth or affluence as a prerequisite for voting is invidious discrimination and the opportunity for equal participation by all voters is required.[4]

The controversy concerning the poll tax has stemmed from the changing interpretation of the equal protection clause of the Fourteenth Amendment. The Court in *Breedlove* v. *Suttles*[5] said that there was no violation of the Fourteenth Amendment in reference to Georgia's poll tax and stated that the equal protection clause did not require absolute equality.[6] States may condition suffrage as they deem appropriate.[7]

1. 86 S.Ct. 1079 (1966). The petitioners, four residents of Virginia, sought leave of the court to prosecute the action in *forma pauperis* alleging that they and members of their class were unable to pay the poll tax and were thus prevented from registering to vote, and from voting in non-federal elections solely because of their poverty.

2. CONST. OF VA., Sec. 18 (1950).

> 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 . . . .

3. 240 F. Supp. 270 (E.D. Va. 1964). The case was dismissed on the ground that the complaint failed to state a claim upon which relief could be granted because payment of a poll tax was not open to question by reason of the Court in *Breedlove v. Suttles*, 302 U.S. 277. With regard to the pauper disqualification, the court noted that there had been no showing that either appellants or members of their class had been prevented from voting on that ground and concluded that "an expression by us on the meaning and the implications of that term would be entirely academic and without place here."

4. Harper v. Virginia State Board of Elections, *supra* 1 at 1081.

5. 302 U.S. 277 (1937). The poll tax was attacked because it discriminated against a certain class of individuals insofar as the tax extended to persons between the ages of 21 and 60.

6. *Id.*, at 283. The Court stated that absolute equality would have the poll tax extend to everyone including the blind and the aged which would result in a harsh and unjust rule.

7. See Breedlove v. Suttles, *supra* note 5 at 283 ("reasonable" conditions were understood).

The Court stated that payment of a poll tax as a prerequisite for voting is not a denial of any privilege or immunity protected by the Fourteenth Amendment because the privilege of voting is not derived from the United States, but is reserved to the states, except as regulated by the Fifteenth and Nineteenth Amendments.[8] The equal protection clause of the Fourteenth Amendment merely necessitates equality of those whom the state deems qualified to vote.

The Court in a later decision indorsed North Carolina's desire to promote intelligent use of the ballot.[9] It was decided that a state may, consistent with the Fourteenth and Seventeenth Amendments,[10] apply a literacy test to all voters irrespective of race or color. The equal protection clause was not impinged because a state's insistence on intelligent use of the ballot, or any other intelligent use of a constitutional right, cannot constitute discrimination as to violate the Fourteenth Amendment.[11]

The rationale of the Court in *Carrington* v. *Rash*[12] extended the approach of "reasonableness" as expounded in *Lassiter* and distinguished the *Breedlove* case. The latter case would condone a broad statute which applied equally to a whole class of persons, while the *Carrington* case refused to sanction a statute which denied the ballot because the individual was a member of a certain class. The Court, inadvertently adopting the approach of *Lassiter*, said that a state could impose reason-

8. U.S. CONST. amend. XV, § 1.
The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account or race, color, or previous condition of servitude.
U.S. CONST. amend. XIX, § 1.
The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

9. Lassiter v. Northhampton County Board of Elections, 360 U.S. 45 (1959).

10. U.S. CONST. amend. IV, Sec. 1.
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
U.S. CONST. amend. XVII.
The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

11. *Supra* note 9 at 47.

12. 380 U.S. 89 (1965).

able residence requirements for voting but it could not, because of the equal protection clause, deny the ballot to a bona fide resident merely because he was a member of the armed services.[13]

While a case to case analysis vaguely differentiates the change of emphasis the Court has given to the Fourteenth Amendment, the contrast becomes more definitive when two cases, diverse in point of time, are compared. In *Pope* v. *Williams*,[14] the Court based their decision on the then well-accepted theory that the privilege to vote, regardless of the equal protection clause of the Fourteenth Amendment, is not granted by the Constitution or by any of its Amendments. It is not a privilege springing from United States citizenship, but a right reserved to the states.[15] However, the more recent case of *Reynolds* v. *Simms*,[16] held that the Federal Constitution through the Fourteenth Amendment "requires" the opportunity for equal participation by all voters in the election of state legislatures.[17]

Harper breaks with the traditional test of the constitutionality of a state law. This test, evolved by the Supreme Court for determining whether an "asserted justifying classification" existed, was whether such a classification could be founded on some rational state policy.[18] The test reduced the likelihood of federal judges determining state policies in terms of their individual opinions. The present case is essentially a colateral application of the rationale of *Douglas* v. *California*[19] decided by the Court in 1963. Although the latter was a criminal case and was decided primarily on the basis of the due process clause, the Court found that the Fourteenth Amendment prohibits the proposition that affluence can be a precondition to the exercise of a constitutional right. The Court, considering affluence as the deciding issue, held the desti-

13. *Id.*, at 91; The logic of Lassiter v. Northhampton County Board of Elections, 360 U.S. 45, in essence promoted the reasonableness of an intelligent vote or conversely denounced illiteracy among voters. The Court in *Carrington v. Rash* denounced the irrationality of denying the vote to a person with the stigma of serving with the armed services. The Supreme Court's reversal of the latter case and affirmance of the former were examples of the Court's nonreluctance to break with the traditional test for the constitutionality of a state law.

14. 193 U.S. 621 (1904); *accord*, Plessy v. Ferguson, 163 U.S. 537 (1886).

15. *Id.*, at 622.

16. 377 U.S. 533 (1964).

17. *Id.*, at 535.

18. McLoughlin v. Florida, 379 U.S. 184, 188 (1964); *accord*, Powell v. Commission of Pennsylvania, 127 U.S. 678 (1943).

19. 372 U.S. 353 (1963).

tute defendants must be afforded as adequate appellate review as defendants who had funds to have counsel represent them.[20]

Along the same line, the Court in *Griffin* v. *Illinois*,[21] held that transcripts must be provided if necessary to allow for an adequate, nondiscriminatory appeal. In the situation where an indigent cannot afford a transcript, they must be provided by the state.[22]

In effect, the present case overrules the *Breedlove* decision. The United States has limited discrimination in "right to vote" cases to intelligent use of the ballot. While the Court has condoned reasonable literacy tests by states, invidious discrimination has been dilineated by the Court in the present case to include affluence as a prerequisite for voting. The *Harper* decision, by renouncing a poll tax of one dollar and fifty cents per year, leaves no room for doubt that the Court will not tolerate a burden of any sort on the constitutional rights of citizens.

Michael Lesniak

Constitutional Law—STATUTORY INFERENCES OF CRIMINALITY. In *U. S.* v. *Romano*,[1] the United States Supreme Court held that the statutory inference of guilt drawn from mere presence was insufficient evidence to convict for possession, custody and control of an illegal operating still.

On October 13, 1960 Federal ATTU Agents and Connecticut State Police conducted a raid on an illegal operating still within an industrial complex in Jewett City, Connecticut. Respondents, Frank Romano and John Ottiano, who were found standing a few feet from the still when the officers entered the building, were arrested and charged with possession, custody and control of an illegal still, illegal production of distilled spirits and conspiracy to produce distilled spirits. Both were subsequently tried in the United States District Court for the District of Connecticut and found guilty on all three courts, receiving three years imprisonment for each offense to run concurrently, and in addition,

20. *Id.*, at 355.
21. 351 U.S. 12 (1956).
22. *Id.*, at 14.
1. 382 U. S. 136 (1965).