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THE proposal to abolish by national law the requirement now prevailing in seven Southern states[1] that voters shall have paid a poll tax in order to vote in any national election involves a constitutional issue of the first magnitude. In the decade immediately following the Civil War the constitutional division of authority between the national and state governments in dealing with the question of Negro suffrage became a point of bitter controversy in Congress. Out of this struggle came the Fourteenth and Fifteenth Amendments to the Constitution, with certain supporting legislation,[2] the aim of which was to prohibit disfranchisement of the Negro on grounds of race, color, or previous condition of servitude. The current anti-poll tax proposal is designed to carry forward one step further the limitations on state power embodied in these amendments insofar as national elections are concerned, and to realize in a more complete sense their basic objective.

Agitation for the enactment of a Congressional statute of this nature began in 1938. Shortly after the general election of that year the Southern Conference on Human Welfare, an association of Southern intellectual and social reform leaders, adopted a resolution urging both state and federal action to abolish poll tax payment as a suffrage requirement.[3] A bill designed to accomplish this result was introduced in Congress the next year by Representative Lee S. Geyer, Democrat, of

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[1] Alabama: Ala. Const. (1901), art. VIII, § 178, as amended by Amendment X (1923), Amendment XIV (1924), Amendment XLIX (1944); Ala. Code Ann. (1940) tit. 17, § 12 and Ala. Gen. Acts (1945) No. 161, § 10. Arkansas: Ark. Const. (1874), art. III, § 1, as amended by Amendment No. 8 (1920), Amendment No. 36 (1944); Ark. Dig. Stat. (Pope, 1937) §§ 4695, 4745. Mississippi: Miss. Const. (1890), art. 12, § 241; Miss. Code (1942) §§ 3130, 3160, 3235; Miss. Gen. Laws (1944) c. 171, § 5. South Carolina: S.C. Const. (1895), art. II, § 4 (e), as amended 1931; S.C. Code (1942) c. 100, § 2267; id. (Supp. 1944) § 2971; S.C. Acts (1944) No. 406. Tennessee: Tenn. Const. (1870), art. IV, § 1; Tenn. Code Ann. (Williams, 1934) §§ 2027, 2028; id. (1945 Supp.) § 2043.1. Texas: Tex. Const. (1876), art. 6, § 2, as amended by art. 6, § 2A (1945); Tex. Stat. Ann (Vernon, 1925) c. 5, arts. 2955, 2959, 2960; id. (1946 Supp.), arts. 2959-2970. Virginia: Va. Const. (1902), art. II, § 18-22; Va. Code Ann. (1942) tit. 6, c. 10, §§ 82, 83, 93, c. 11, §§ 109-116; Va. Acts (Extra Sess., 1945) c. 79.

[2] Act of May 31, 1870, 16 Stat. L. 140.

[3] Cf. 84 CONG. REC., Appx. 4123-4125 (1939).

California.[4] Although hearings were held upon it, this original anti-poll tax measure died in the House Judiciary Committee.

The Geyer Bill was reintroduced in the next Congress. It was eventually passed by the House on October 13, 1942, by a vote of 254 to 84.[5] A substitute version, sponsored by Senator Claude Pepper, Democrat, of Florida, was reported out by the Senate Judiciary Committee.[6] It failed of passage in the Senate several weeks later, when a filibuster was organized against it by certain Southern Senators and an attempt to apply the cloture rule to debate proved unsuccessful.[7] The pattern thus set by the two Houses in the 77th Congress was repeated in the two succeeding Congresses. The Marcantonio Bill, a measure identical in form with Senator Pepper's substitute for the Geyer Bill of the previous Congress, was passed by the House in 1943.[8] It was killed by Senate filibuster early in 1944.[9] Similar results followed the passage of the Pepper-Marcantonio Bill in the House during the 79th Congress.[10]

Meanwhile the poll tax issue had arisen in connection with the passage of the Ramsey Act of 1942, which was designed to facilitate participation in the Congressional elections of that year by members of the armed forces. During passage of this measure through the Senate an amendment to it abolishing the requirement of payment of poll taxes for voters in the armed services was inserted. The anti-poll tax clause was subsequently incorporated in the final draft, after conference committee action.[11] The poll tax exemption clause of the Ramsey Act[12]

[4] The bill, which he introduced "by request," was actually drafted by the Committee on Civil Rights of the Southern Conference on Human Wefare.

[5] 88 CONG. REC. 8066-8081, 8120-8175 (1942). Recourse to the discharge procedure against the House Rules and Judiciary Committees was necessary to permit its consideration.

[6] S. Rep. 1662, 79th Cong., 2d sess.

[7] 88 CONG. REC. 8814 passim, 9065-9072 (1942). The motion to invoke cloture was defeated by a vote of 37 to 41, a two-thirds majority being required.

[8] 89 CONG. REC. 4807 passim, 4889 (1943). Representative Marcantonio, American Labor Party Member, of New York, became the sponsor of the bill in the House following the death of Representative Geyer in 1941.

[9] 90 CONG. REC. 4172 passim, 4470 (1944).

[10] 91 CONG. REC. 5291 pasim, 6003 (1945); 92 CONG. REC. 10383 passim, 10536-7 (1946).

[11] The poll tax exemption amendment, which was offered by Senator Brooks, Republican, of Illinois, was included in the bill after efforts by Representative Kefauver, Democrat, of Tennessee, to insert a similar provision had failed on original consideration of the bill in the House. Cf. 88 CONG. REC. 6544-6569, 6900-6941, 6952-6972, 7079 (1942).

[12] Act of Sept. 16, 1942, 56 Stat. L. 753, c. 561, § 2.

proved to be of little consequence in the 1942 Congressional elections, however, because of the light participation by armed forces personnel in the balloting. When the Servicemen's Ballot Act was passed in 1944, amending the Ramsey Act in various respects, the poll tax exemption clause of the earlier statute was retained.[13] Its effect was therefore felt in greater degree in the general election of 1944, since a much larger number of participating voters were affected. Those states which had not already adjusted their voting requirements to conform to the exemption clause in the earlier federal statute eventually did so by enactment of appropriate legislation and the adoption of constitutional amendments where necessary.[14] The constitutionality of the exemption clause of the federal statute was not necessarily conceded in these state actions. Nevertheless the federal law must have contributed in some measure to the limited retreat from the poll tax system thus made. Adjustment of state laws and constitutional provisions to conform to the federal statute averted a collision of national and state authority, and no judicial examination of the constitutional issue resulted. Meanwhile the more comprehensive Pepper-Marcantonio Bill remains before Congress, presenting in direct fashion the basic constitutional issue. What effect seizure of control over both Houses of Congress by the Republicans in the 1946 elections will have on the vigor with which the struggle for passage of an anti-poll tax law is waged is somewhat conjectural.[15] In any event it is unlikely that we have seen the end of

[13] 50 U.S.C. (Supp. 1941-1946) § 302. The clause stipulates: "No person in military service in time of war shall be required, as a condition of voting in any election for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, to pay any poll tax or make any other payment to any State or political subdivision thereof."

[14] Four of the poll tax states were able to exempt members of the armed services from the poll tax requirement by merely revising their suffrage and revenue laws: Miss. Gen. Laws (1944) c. 171, § 5; Tenn. Code Ann. (Williams, 1945 Supp.) § 2043.1; Va. Acts (Extra sess., 1945) c. 79; S.C. Code (1944 Supp.) § 2971 and S.C. Acts (1944) No. 406, p. 1221. Three states found it necessary first to adopt constitutional amendments to make effective the exemption: Ala. Const., Amendment XLIX, Nov. 17, 1944, adopted after proposal by the legislature; Ark. Const. (1874), Amendment No. 36, proposed by the initiative and adopted Nov. 7, 1944; Tex. Const. (1876), Amendment to art. 6, § 2, adopted August 25, 1945. The Georgia poll tax requirement was abolished *in toto*. Ga. Const. (1945), art. II, § 1, ¶ 3 and Ga. Acts and Res. (1944) No. 43, p. 129. The Tennessee legislature, in Tenn. Acts (1943) chs. 37, 38, pp. 134, 135, repealed the statutory levy of a poll tax in that state; but this action was held unconstitutional by the Supreme Court of the State in Biggs v. Beeler, 180 Tenn. 198, 173 S. W. (2d) 144 (1943).

[15] A plank in the 1944 Republican Party Platform pledged submission of a federal constitutional amendment abolishing the poll tax requirement in national elections. This was in keeping with the general "states rights" tone of the party's pledges on a

agitation for exercise of power by Congress along the lines proposed in that bill, and the question of the constitutionality of such a measure remains a live and important one.

The original anti-poll tax measure introduced by Representative Geyer in 1939 differed from the later Pepper-Marcantonio Bill in several significant respects. The former was framed as an amendment to the Hatch Act of 1939. It was based on the theory that Congress, under its constitutional authority to regulate the manner in which members of Congress are chosen, might act to prevent pernicious political activities in federal elections growing out of the poll tax system. Since there was at that time grave doubt concerning the existence of federal power to deal with Congressional primaries, the Geyer Bill proposed to exempt voters from the poll tax requirement only in the choice of national officers at general elections. The later version, embodied in the Pepper-Marcantonio Bill, is not designed as an amendment to the Hatch Act. It seeks to abolish the poll tax requirement in primaries as well as in general elections;[16] and it is based upon an asserted fundamental authority of Congress to protect the right of qualified citizens to participate freely in any federal election or primary. Like the Geyer Bill, it would not be operative against poll tax requirements in state and local elections, nor prevent the levying of poll taxes by states or their subdivisions for revenue purposes, independently of any national suffrage considerations.

The Pepper-Marcantonio Bill[17] begins with a statement of Congressional intent and justification, which is followed by four sections containing the prohibitive features. The preamble asserts that through the imposition of poll tax payment requirements by certain governmental jurisdictions, which have "no reasonable relation to the intelligence,

number of other issues. It was also in line with an effort made by 33 of the 37 Senate Republicans early in 1944 to induce the Senate Judiciary Committee to report out a constitutional amendment proposal of this character. In the House votes on the Geyer Bill and the Pepper-Marcantonio Bill, however, an overwhelming majority of the Republican members favored passage; and in the Senate votes on resort to cloture procedure, which were in a sense indicative of sentiment on statutory abolition of the poll tax requirement, a majority of Republicans were recorded on the affirmative side.

[16] Doubt on the point of existence of federal power to reach primaries had been resolved by the Supreme Court in favor of federal authority. Cf. United States v. Classic, 313 U.S. 299, 61 S. Ct. 1031 (1941), and Smith v. Allwright, 321 U.S. 649, 64 S. Ct. 757 (1944).

[17] It is titled "A bill concerning the qualifications of voters or electors within the meaning of Section 2, Article I, of the Constitution, making unlawful the requirement for the payment of a poll tax as a prerequisite to voting in a primary or general election for national officers."

ability, character, wealth, community consciousness or other qualifications of voters," many citizens are deprived of the right and privilege of voting for national officers as guaranteed by the Constitution, and the integrity of the ballot is impaired. Section 1 then declares that such a requirement shall not be deemed a qualification of voters or electors in choosing Senators, Representatives and Presidential electors within the meaning of the Constitution, and shall be deemed an "interference" with the manner of holding primaries and elections and a "tax upon the right or privilege of voting" for such officers. Section 2 declares it to be "unlawful" for any state, municipality or other governmental subdivision to prevent any person from exercising the franchise in selecting such national officers on the ground of his not having paid a poll tax, and any requirement of this nature is declared to be "invalid and void." Sections 3 and 4 by similar language make it unlawful for any state or local governmental officer to "interfere" with the choice of national officers by requiring payment of a poll tax, even though acting under cover of governmental authority. No criminal penalties are provided in the proposed act for violation of its terms. It is assumed, apparently, that the penalty provisions of the 1870 Enforcement Act, which have played a prominent part in recent federal actions protecting suffrage rights in the South,[18] could be invoked against individuals to compel its observance.

Undoubtedly the considerations determining the attitudes of members of Congress toward a federal anti-poll tax measure are primarily political in nature. The debates in Congress, however, have tended to center attention largely upon the constitutional question of federal power. Indeed, opponents state their case almost exclusively in terms of the alleged unconstitutionality of the proposal. With a liberality which in some quarters at least may be suspect, many of the bitterest opponents of a federal poll tax exemption law go so far as to concede that the poll tax requirement is undemocratic, iniquitous and outmoded, and should be abolished; but they oppose on constitutional grounds the use of a federal statute for this purpose.[19] Supporters of restrictive federal legislation must, perforce, devote a major share of their atten-

[18] Act of May 31, 1870, 16 Stat. L. 140, 18 U.S.C. (1940) §§ 51 and 52. Cf. United States v. Classic, 313 U.S. 299, 61 S. Ct. 1031 (1941); United States v. Saylor, 322 U.S. 385, 64 S. Ct. 1101 (1944); United States v. Mosley, 238 U.S. 383, 35 S. Ct. 904 (1915).

[19] Cf., for example, remarks of Senator Bilbo, Democrat, of Mississippi, 88 CONG. REC. 8833 and 8953 (1942); Senator Andrews, Democrat, of Florida, id. 9053; Representative Cox, Democrat, of Georgia, id. 8069; Representative Pearson, Democrat, of Tennessee, id. 8130; and Representative Kilday, Democrat, of Texas, id. 8163.

tion to answering the argument against the constitutionality of the statutory approach, while also developing the argument against the poll tax requirement on grounds of policy. It is fair to conclude that, if the constitutional basis for such federal legislation were not so doubtful, the opposition would hesitate to resort to filibustering tactics to prevent its passage in the face of the strong national public opinion against the principle of the poll tax requirement.[20] The constitutional issue is therefore a most crucial point in the controversy.

As advanced in Congressional debates the contentions against the validity of a federal anti-poll tax law can be summarized in the following general propositions:

(1) By virtue of those sections of the Constitution relating to the election of members of Congress and Presidential electors[21] power to determine suffrage qualifications in national elections is vested by the Constitution in the states, subject only to the limitations of the Fifteenth and Nineteenth Amendments prohibiting the establishment of qualifications based on race, color, previous condition of servitude, or sex. State authority over determination of suffrage requirements, therefore, may not be usurped or limited directly by Congress.

(2) To require the payment of a poll tax as a voting prerequisite is a reasonable and appropriate exercise of state power over the suffrage. In every instance when this requirement has been challenged before the Supreme Court on various constitutional grounds, it has been found to be in conformity with the Constitution. Cases directly in point are *Williams v. Mississippi*,[22] in which the requirement that all taxes, including poll taxes, must be paid by prospective voters was found not to be violative, on its face, of the Fourteenth or Fifteenth Amendment; *Breedlove v. Suttles*,[23] in which the Georgia poll tax requirement (since repealed), from which persons over sixty years of age, the blind, and

[20] According to an American Institute of Public Opinion poll taken in April, 1941, 63 per cent of the voting public in the nation at large oppose the poll tax requirement, while only 25 per cent approve, with 12 per cent undecided. 5 PUBLIC OPINION Q. 470 (1941).

[21] Article I, § 2: "The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the State Legislature." (Similar language is found in the Seventeenth Amendment relative to popular election of Senators.)

Article II, § 2: "Each State shall appoint, in such manner as the legislature thereof shall direct, a number of electors equal to the whole number of senators and representatives to which the State may be entitled in the Congress. . . ."

[22] 170 U.S. 213, 18 S. Ct. 583 (1898).

[23] 302 U.S. 277, 58 S. Ct. 205 (1937).

women who did not register for voting were exempted, was sustained against contentions that it violated the equal protection and privileges and immunities clauses of the Fourteenth Amendment, and the Nineteenth Amendment guarantee against suffrage discrimination on grounds of sex; and *Pirtle v. Brown*,[24] in which Tennessee's poll tax requirement was upheld against contentions that it violated the equal protection and privileges and immunities clauses of the Fourteenth Amendment when applied in the choice of a member of Congress.

(3) It follows from the above contentions that direct national action to eliminate the poll tax requirement is possible only through adoption of a restrictive constitutional amendment similar to the Fifteenth and Nineteenth Amendments.[25]

In meeting these arguments advocates of an anti-poll tax law employ what might be termed tactics of infiltration rather than direct assault. Conceding the general proposition that the Constitution adopts, for national elections, the voting qualifications set up by the states, they insist that the authority of the states in fixing suffrage standards is nevertheless subject in some degree to Congressional control. The competence of Congress to abolish by statute a state poll tax requirement is supported by a line of argument embracing the following basic propositions:

(1) The requirement that a voter, otherwise eligible to participate in a national election, shall have paid a poll tax is not a suffrage "qualification" in the sense contemplated by the Constitution in those sections adopting state electoral qualifications for national elections. Such a requirement has no reasonable relation to a person's competence as a voter, and a finding to this effect is within the power of Congress to make. Supreme Court pronouncements sustaining state poll tax payment requirements in the face of attacks on constitutional grounds are not in point on the validity of the proposed anti-poll tax statute. These pronouncements merely establish the proposition that the Court does not feel impelled to nullify such requirements solely on the basis of

[24] (C.C.A. 6th, 1941) 118 F. (2d) 218; cert. den., 314 U.S. 621, 62 S. Ct. 64 (1941).

[25] Opponents concede that Congress might, of course, approach the problem indirectly by a statute implementing the clause of section 2 of the Fourteenth Amendment, which provides that a state's representation in the House shall be reduced in the event that it disfranchises any of its male citizens over twenty-one years of age for any reason other than participation in rebellion or crime. Various practical considerations bar resort to this indirect approach to abolition of the poll tax requirement, one of the most obvious of which is determination of the actual number barred from voting by reason of inability to pay a poll tax.

existing constitutional guarantees *in the absence of an expression of Congressional view regarding their propriety.*

(2) The Supreme Court has declared repeatedly that the right of duly qualified citizens to participate in Congressional elections is a right derived from the Constitution of the United States and not from the states.[26] It arises from the stipulations in the Constitution that members of the House and Senate are to be chosen by the "people" of the several states. The poll tax requirement constitutes a burden upon and an obstruction to the enjoyment of this right of popular participation in the election of members of Congress. Hence Congress, under its specific authority to regulate the manner of Congressional elections[27] and under its implied power to implement the provisions of the Constitution relative to the organization and functioning of the national government, may legislate to prevent undue infringement upon this right.

(3) Poll tax requirements lead to wide-scale corruption in federal elections. Purchase of votes by payment of the poll taxes of indifferent electors is a common practice wherever the poll tax system is found. Under its power to regulate the manner of Congressional elections and its power to effectuate provisions of the Constitution generally so far as the organization and functioning of the national government is concerned, Congress may act to maintain the purity of these and other related federal elections[28] by declaring prepayment of a poll tax to be unnecessary for voters otherwise eligible to participate in such elections.

On first view the contentions advanced against the constitutionality of a federal anti-poll tax law seem to be irrefutable. Beginning with

[26] Cf. Ex parte Yarbrough, 110 U.S. 651 at 664, 4 S. Ct. 152 (1884); Wiley v. Sinkler, 179 U.S. 58 at 62, 21 S. Ct. 17 (1900); Swafford v. Templeton, 185 U.S. 487 at 493, 22 S. Ct. 783 (1902); United States v. Classic, 313 U.S. 299 at 314-315, 61 S. Ct. 1031 (1941).

[27] Article I, § 4: "The times, places and manner of holding elections for senators and represenatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators."

[28] Cf. Burroughs and Cannon v. United States, 290 U.S. 534, 54 S. Ct. 287 (1934), in which the constitutionality of those sections of the Federal Corrupt Practices Act of 1925 relating to publicity of political committee finances in presidential elections was upheld. At p. 545 in the opinion Justice Sutherland observed: "To say that Congress is without power to pass appropriate legislation to safeguard such an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self protection. *Congress, undoubtedly, possesses that power, as it possesses every other power essential to preserve the departments and institutions of the general government from impairment or destruction, whether threatened by force or by corruption.*" (Italics supplied.)

the first elections under the Constitution it has been the practice to admit to membership in the national electorate those, and only those, who under the constitutional provisions and laws of the several states are made eligible to vote for the most numerous branch of the state legislature. That this is in accord with the intent and understanding of the framers is made clear by examination of the debates in the Federal Convention and in the ratifying conventions, and of the *Federalist* essays.[29] At no time has Congress ever passed legislation seeking to impose directly upon the states its own definition of suffrage standards, although bills of this character have been introduced in Congress prior to the present controversy.[30] Such national regulation of suffrage stand-

[29] See the analysis of views of the framers in Hogensen, "Anti-Poll Tax Legislation and the Constitution," 11 GEO. WASH. L. REV. 73 (1942). Writing on this point in No. LII of THE FEDERALIST Madison observed: "The definition of the right of suffrage, is very justly regarded as a fundamental article of republican government. It was incumbent on the convention, therefore, to define and establish this right in the constitution. To have left it open for the occasional regulation of congress, would have been improper for the reason just mentioned. To have submitted it to the legislative discretion of the states, would have been improper for the same reason; and for the additional reason, that it would have rendered too dependent on the state governments, that branch of the federal government, which ought to be dependent on the people alone. To have reduced the different qualifications in the different states to one uniform rule, would probably have been as dissatisfactory to some of the states, as it would have been difficult to the convention. The provision made by the convention appears, therefore, to be the best that lay within their option. It must be satisfactory to every state; because it is conformable to the standard already established, or which may be established by the state itself. It will be safe to the United States; because, being fixed by the state constitutions, it is not alterable by the state governments, and it cannot be feared that the people of the states will alter this part of their constitutions, in such a manner as to abridge the rights secured to them by the federal constitution."

In considering the possibility that the Congress, under its power to regulate Congressional elections, might attempt to restrict membership in the House of Representatives to "the wealthy and well-born," Hamilton wrote in No. LX of THE FEDERALIST: "The truth is, that there is no method of securing to the rich the preference apprehended, but by prescribing qualifications of property either for those who may elect, or be elected. But this forms no part of the power to be conferred upon the national government. Its authority would be expressly restricted to the regulation of the *times*, the *places*, and the *manner* of elections. The qualifications of the persons who may choose or be chosen, as has been remarked upon another occasion, are defined and fixed in the constitution; and are unalterable by the legislature."

[30] In the opinion by Chief Justice Waite in Minor v. Happersett, 21 Wall. (88 U.S.) 162 (1875), in which the Court held that denial of the suffrage to women by a state did not contravene the privileges and immunities clause of the Fourteenth Amendment, there was a hint that Congress might possess such power. At p. 171 in the opinion the Court declared: "It is not necessary to inquire whether this power of supervision [over Congressional elections] thus given to Congress is sufficient to authorize any interference with the State laws prescribing the qualifications of voters, for no such interference has ever been attempted. The power of the State in this particular is certainly supreme *until Congress acts*." (Italics supplied.)

ards as has been achieved has been accomplished through constitutional amendments. They have been phrased in such manner as to leave basic authority over the subject in the hands of the states, subject to the specific restrictions enumerated. The Supreme Court has so stated.[31]

Tax-paying requirements of one kind or another were in force in many of the states at the time of the adoption of the Constitution and were not then deemed to have been disturbed by it. Such suffrage restrictions had almost entirely disappeared by 1860, but they were never entirely eliminated. The poll tax requirements now in force, although established after the adoption of the Fifteenth Amendment for the more or less openly avowed purpose of evading the spirit of that Amendment,[32] have successfully withstood every attack in the federal courts when challenged as violative of restrictions placed on the states by the United States Constitution.[33] Precedent and practice seem to indicate that conditioning the privilege of voting upon payment of a poll tax is wholly a matter of state concern, and that no federal constitutional "right" derived from the Fourteenth, Fifteenth or Nineteenth Amendments is violated by such a requirement, even where the choice of national officers is involved.

Despite these considerations there is some reason to believe that the Supreme Court, if presented with an opportunity to rule directly upon the question, would find Congress with power to act in the premises. The Supreme Court of 1937 to date has established itself as a precedent-breaking body. It has probably shattered more established con-

Whether they were inspired by this language in the Court's opinion is not clear; but in any event bills were introduced in Congress from time to time in the 1880's and 1890's proposing to remove the disability placed upon women in regard to participation in House elections. See, for example, S. 3961 and S. 3962, introduced by Senator Manderson of Nebraska in 1889. 20 CONG. REC. 1816 (1889). None of the bills appears to have reached the floor in either house.

[31] Guinn and Beal v. United States, 238 U.S. 347 at 362, 35 S. Ct. 926 (1915); Breedlove v. Suttles, 302 U.S. 277, 58 S. Ct. 205 (1937). In the latter case Justice Butler, speaking for a unanimous Court, declared at 283: "Privilege of voting is not derived from the United States, but is conferred by the State and save as restrained by the Fifteenth and Nineteenth Amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate."

[32] For an account of the state-by-state revival of tax-paying requirements in the South in the period from 1870 to 1910 see S. Hearings on S. 1280 (the Pepper Bill) before a sub-committee of the Senate Judiciary Committee, 77th Cong., 2d sess., pp. 253-254. At pp. 261-265 in the same document is a digest of poll tax provisions in force in the eight Southern states having such voting requirements in 1940. Desire to disfranchise "poor whites," who had displayed in some sections of the South a predilection for Populism and other "radical" political faiths during the 1890's was also a factor in the re-establishment of tax-paying requirements.

[33] Supra.

stitutional constructions and interpretations than any other Court in our history over a similar period of time.[34] Significantly, two of its recent rulings which have upset or greatly modified earlier precedents have moved in the direction of extending the scope of the guarantees of the federal Constitution and of Congressional power under it in the sphere of elections.[35] A finding by the Court that a federal anti-poll tax statute lies within the range of Congressional power would fit easily into this pattern of recent judicial decisions of a nationalizing character.

Again, it should be observed that the Supreme Court has on occasion shown a willingness to characterize as "political questions" certain kinds of issues raised before it. The power to dispose of such questions, it asserts, belongs to the political branches of the national government. Among the matters it has thus accorded the President and Congress a determinative authority over are the interpretation and enforcement of the federal constitutional guarantee of a republican form of government in the states,[36] and the definition of the political status of Indian tribes.[37] If these two matters are susceptible of final determination by the political branches of the national government, so also might be a citizen's claim to a right to participate in national elections. Thus the "political question" doctrine is available to the Court as a basis upon which to sustain a federal anti-poll tax statute of the sort now under consideration. The contentions advanced in support of the constitutionality of

[34] In Smith v. Allwright, 321 U.S. 649 at 665, note 10, 64 S. Ct. 757 (1944), the majority opinion cites no less than fourteen cases decided by it since 1937 in which prior rulings were overturned.

[35] United States v. Classic, 313 U.S. 299, 61 S. Ct. 1031 (1941), in which federal power was held to extend to regulation of Congressional primaries, thus clarifying a point obscured since the decision in Newberry v. United States, 256 U.S. 232, 41 S. Ct. 469 (1921); and Smith v. Allwright, 321 U.S. 649, 64 S. Ct. 757 (1921), overruling Grovey v. Townsend, 295 U.S. 45, 55 S. Ct. 622 (1935), wherein the Southern "white primary" system, when not based directly on state legislative authorization, had been held not to violate the Fifteenth Amendment.

[36] Cf. Luther v. Borden, 7 How. (48 U.S.) 1 at 42 (1849); Taylor and Marshall v. Beckham (No. 1), 178 U.S. 548 at 578, 20 S. Ct. 890, 1009 (1899); Pacific States Telephone and Telegraph Co. v. Oregon, 223 U.S. 118 at 150, 32 S. Ct. 224 (1912); Ohio ex rel. Davis v. Hildebrandt, 241 U.S. 565 at 569, 36 S. Ct. 708 (1916); Mountain Timber Co. v. Washington, 243 U.S. 219 at 234, 37 S. Ct. 260 (1917); Ohio ex rel. Bryant v. Akron Metropolitan Park District, 281 U.S. 74 at 79, 50 S. Ct. 228 (1930).

[37] Cf. The Cherokee Nation v. Georgia, 5 Pet. (30 U.S.) 1 at 20 (1831); United States v. Holliday, 3 Wall. (70 U.S.) 407 at 419 (1866); The Kansas Indians, 5 Wall. (72 U.S.) 737 at 756 (1866); United States v. Sandoval, 231 U.S. 28 at 46, 34 S. Ct. 1 (1913). On the general subject see POST, CHARLES G., THE SUPREME COURT AND POLITICAL QUESTIONS (1936) and Field, "The Doctrine of Political Questions in the Federal Courts," 8 MINN. L. REV. 485 (1924).

such a statute may accordingly have a validity heretofore generally unrecognized.

The first contention noted above, viz., that Congress is competent to make a finding that the poll tax requirement is not a bona fide suffrage "qualification" in the constitutional sense is basic to this approach. This view of the nature of the requirement as it is currently applied can be defended on a number of grounds. State poll tax regulations have the effect of discriminating between those who have *paid* the tax and those who, although *assessed* for it, have not paid it. It is accordingly a suffrage requirement different from earlier tax-paying qualifications which were essentially indices of property ownership and wealth, and therefore presumably of political judgment and responsibility. Individuals upon whom the poll tax is assessed in the seven Southern states include the greater part of the potential electorate. The payment of this tax does not in itself serve to set off the payer, in terms of electoral competence, in any significant way from other individuals. The relation between payment of the poll tax and the likelihood of the individual's having an economic status indicative of a minimum amount of political capacity is at most casual. Particularly is this so where the payment of the poll tax of another to make possible the control of his vote occurs on a wide-spread scale, as appears to be the case in some sections of the South.[38]

The theory that payment of a poll tax is an evidence of political interest and responsibility and is therefore a valid suffrage qualification loses force also in the face of the obvious fact that in these days of complicated state and local tax structures, which embrace numerous "hidden" tax levies on income and expenditure, every self-supporting individual is a taxpayer in the economic sense, if not by legal definition. To single out the payers of one particular tax as the chosen group who shall be permitted to exercise the franchise, if they are otherwise eligible, is wholly unrealistic from the point of view of a design to limit the suffrage to "taxpayers."[39]

On still another count there is ground to believe that the Supreme

[38] For evidence of the extent to which buying of votes through payment of poll taxes is practiced in certain localities see Hearings on S. 1280, Sub-committee of the Senate Judiciary Committee, 77th Cong., 2d sess., pp. 173-177, 277-281.

[39] Mississippi requires that a voter, in order to be eligible to participate in general elections, must have paid all taxes assessed over the two preceding years, including poll taxes. In primaries, which are the significant elections in that state, however, payment of only poll taxes is required. Miss. Const. (1890), art. 12, § 241; 3 Miss. Code Ann. (1942) §§ 3130, 3160, 3235. Until 1935 South Carolina also required that all taxes assessed be paid in order to vote in state or county elections.

Court might accord weight to a Congressional finding that the requirement that a poll tax must have been paid is not a genuine suffrage "qualification" in the constitutional sense. All states employing this device grant exemption from it to various groups in the electorate. South Carolina, Mississippi and Texas exempt all persons over sixty; Tennessee exempts those over fifty; and Alabama those over forty-five.[40] As has already been pointed out, persons in the armed services of the United States have been exempted in all the seven states which retain the poll tax system. Among other groups exempted in one or more states are the deaf, dumb, blind, insane, those disabled by loss of a hand or foot, ex-Confederate veterans, pensioned veterans of military service and their widows, and members of the State Guard.[41] Despite the fact that the Supreme Court has specifically refused to hold that exemptions of this nature render the poll tax requirement inoperative because of conflict with the equal protection clause of the Fourteenth Amendment,[42] it is evident that there is a certain element of spuriousness about a suffrage "qualification" with so many loopholes in it.

The Supreme Court might also conceivably find persuasive the contention that, without regard to its own views on whether the payment of a poll tax may constitutionally be required by a state as a condition for voting, it should respect a Congressional declaration that such a requirement shall not be enforced on those seeking to vote in a national election because it obstructs the exercise of a constitutionally guaranteed right of popular participation in such elections. The possibility that the Court might support a federal anti-poll tax law on this ground is suggested by the language of (then) Justice Stone's opinion in the *Classic* case:

> "While, in a loose sense, the right to vote for representatives in Congress is sometimes spoken of as a right derived from the states, see *Minor v. Happersett*, 21 Wall. 162, 170; *United States v. Reese*, 92 U.S. 214, 217-218; *McPherson v. Blacker*, 146 U.S. 1, 38-39; *Breedlove v. Suttles*, 302 U.S. 277, 283, this statement is true only in the sense that the states are authorized by the Constitution, to legislate on the subject as provided by Sec. 2 of Art. I, *to the extent that Congress has not restricted state action by the exercise of its powers to regulate elections under § 4 and its more general power under Article I, § 8, clause 18 of the Constitution*

[40] Hearings on S. 1280, Sub-committee of the Senate Judiciary Committee, 77th Cong., 2d sess., pp. 261-265.

[41] Ibid.

[42] Breedlove v. Suttles, 302 U.S. 277, 58 S. Ct. 205 (1937).

'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.'"[43]

The meaning to be attached to this statement is not altogether clear. The issue before the Court was the power of Congress to enforce the right of a qualified voter to have his vote received and counted honestly in a Congressional primary in Louisiana and the construction of federal statutes in this regard. So far as the controversy over Congressional power to amend state suffrage qualifications in concerned, this part of the Court's opinion is dictum. That the learned justice had in mind only the right of a *qualified* voter to vote and the power of Congress to protect his right to do so is suggested by language at other points in the opinion.[44] If that was the meaning intended, the statement goes no farther than previous judicial pronouncements[45] wherein Congress was held to have power to protect the right of voters, eligible under state suffrage requirements, to have their ballots received and counted.

On its face, however, this statement appears to mean that the power of the state to make provisions on the election of members of Congress, including provisions on who shall be allowed to participate in such elections, is subject to a superior power in Congress. The implication is that the constitutional right of the "people" to choose is not only enforceable, but also in some degree definable, by Congress. However revolutionary such a conception of federal legislative power may appear to be, it is not an unreasonable one in view of the broad powers hitherto conceded Congress to implement those provisions of the Constitution dealing with the structure and functioning of the national government.

So far as the Suffrage Amendments alone are concerned, a state might impose on prospective voters such conditions as residence in the state for fifteen years, an age requirement of forty years, ownership of property worth $10,000, or an educational attainment equivalent to a

[43] United States v. Classic, 313 U.S. 299 at 315, 61 S. Ct. 1031 (1941). (Italics supplied.)

[44] Id. at 310: "Such right as is secured by the Constitution to *qualified voters* to choose members of the House of Representatives is thus to be exercised in conformity to the requirements of state law subject to the restrictions prescribed by § 2 and to the authority conferred on Congress by § 4, to regulate the times, places and manner of holding elections for representatives." (Italics supplied.)

And at p. 315: "Obviously included within the right to choose, secured by the Constitution, is the right of *qualified voters within a state* to cast their ballots and have them counted at Congressional elections." (Italics supplied.)

[45] Ex parte Yarbrough, 110 U.S. 651, 4 S. Ct. 152 (1884); Wiley v. Sinkler, 179 U.S. 58, 21 S. Ct. 17 (1900); United States v. Mosley, 238 U.S. 383, 35 S. Ct. 904 (1915).

college degree. It would be difficult to contend that "qualifications" such as these are consistent with the spirit and intent of the Constitution, even though they do not contravene directly the Fourteenth, Fifteenth or Nineteenth Amendments. But if they are void under the Constitution, on what grounds could they properly be held invalid except on the basis of conflict with a federal statute protecting the right of the people to choose their national legislative officers? The agency which in the past has assumed responsibility for passing judgment on whether the states have transcended constitutional limits in prescribing suffrage requirements has been the Supreme Court. It has been compelled to rely solely upon the provisions of the Suffrage Amendments as weapons with which to strike down state measures deemed violative of the principles of popular government.[46] Why should it not also take into account the formally expressed views of Congress in such cases, particularly when the state measures in question concern elections of members of Congress, a matter on which the Constitution specifically grants to Congress a power to override state regulations?

Recognition of this principle by the Court would not have the effect of transferring to Congress complete authority to prescribe suffrage qualifications for voters in national elections. It would only concede to Congress power to nullify state electoral restrictions which run counter to the constitutional stipulation that the choice of federal legislative officers must be made by the people.[47] The authority of the state to impose on voters in state and local elections a poll tax or other type of requirement not clearly prohibited by the Suffrage Amendments would be unaffected.[48]

[46] Cf. Neal v. Delaware, 103 U.S. 370 (1880); Guinn and Beal v. United States, 238 U.S. 347, 35 S. Ct. 926 (1915); Nixon v. Herndon, 273 U.S. 536, 47 S. Ct. 466 (1927); Nixon v. Condon, 286 U.S. 73, 52 S. Ct. 484 (1932); Smith v. Allwright, 321 U.S. 649, 64 S. Ct. 757 (1944).

[47] Since the Constitution states explicitly in Article II, § 1, that presidential electors must be appointed in each state "in such manner as the legislature thereof may direct," the contention that Congress may abolish the poll tax requirement in presidential elections in order to protect an implied constitutional right of popular participation is not applicable. Nevertheless the Pepper-Marcantonio Bill purports to cover presidential as well as congressional elections. It will be noted that the poll tax exemption clause in the Servicemen's Ballot Act of 1944 covers all national elections, including presidential elections. Supra, note 13. It should be observed that the power of Congress to regulate campaign funds in presidential elections has been sustained by the Supreme Court. Supra, note 28.

[48] Restrictions of the applicability of the poll tax exemption principle to federal elections in the Pepper-Marcantonio Bill in one sense deprives advocates of one of their strongest constitutional supports, although it gives their proposal, no doubt, wider political appeal by offering less challenge to the doctrine of states rights. If the proposed

For the reasons outlined above there is, therefore, considerable justification for the belief that past practice and understandings would not necessarily be determinative of the outcome, should opportunity be afforded for a judicial test of the authority of Congress to abolish by law the poll tax requirement in federal elections. The principle at stake is a far broader one than mere annulment of the poll tax requirement. If a statute of this nature should be passed and the Supreme Court should make a favorable finding on its constitutionality, a foundation will have been established upon which Congress might proceed in the future to impose necessary restraints on any state bent upon disfranchising politically weak minority elements through imposition of spurious suffrage "qualifications."

A federal constitutional amendment declaring the imposition of a poll tax requirement in national elections to be invalid might well fall short of achieving its fundamental purpose. States opposed to the principle of a tax-free franchise could easily discover new ways of disfranchising "poor whites" and Negroes, not violative of the letter of such an amendment, just as they have discovered means of circumventing the Fifteenth Amendment through the poll tax requirement and, until it was recently invalidated, the "white primary" system. Implicit in the Fourteenth, Fifteenth and Nineteenth Amendments is a national policy of guaranteeing the suffrage to all competent adult citizens. If this policy is to be effectively safeguarded, at least in national elections, against the acts of a minority of states which refuse to subscribe to it, the approach proposed in the current anti-poll tax measure offers far more promise of success in the end than resort to the cumbersome process of constitutional amendment.

statute contemplated abolition of the poll tax requirement in state and local elections, the point could be made that it is designed to carry out the federal constitutional guarantee of a republican form of government in the states. As has been pointed out above, the Supreme Court has consistently maintained that primary responsibility rests upon the President and Congress to give meaning and effect to this guarantee. Since the poll tax results in the exclusion of a substantial portion of the adult citizenry from the electorate, it could well be argued that it is violative of this guarantee and that Congress might therefore abolish it for state elections. This would have the effect of eliminating the requirement also for national elections. Note Madison's comment on the relationship between suffrage requirements and the republican character of a state's government in the excerpt quoted supra, note 29.